

205 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-63790-2023 (O&M)

Date of Decision: 22.12.2023

ASHNESH @ ASHNEH PATHAK

...Petitioner

V/S

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Parunjeet Singh, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

HARPREET SINGH BRAR J. (Oral)

1. This is the second petition under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 280 dated 27.04.2023 registered under Sections 342, 380, 457 of Indian Penal Code (Sections 395, 397, 120-B and 201 of IPC added later on) at Police Station Thanesar Sadar, District Kurukshetra.

2. The present FIR was lodged on the complaint made by Mahesh on the allegations that in the night of 26.04.2023 at around 12 O'clock, 5-6 persons along with rods entered their site Sitaram Cold Storage near village Mathana. One of his watchman Om Pal was given beatings, slapped two three times and tied with rope on bed lying in the room with a cloth. Thereafter, they made a telephone call to some other person and asked him to bring the vehicle and told other people to cut off the lights. The complainant submitted that he can identify the persons, if produced before him. Thereafter, from the site about 6 tons

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of iron rods, Gas Cylinder, Watchman's bag containing about Rs.5,000/-, mobile of Watchmen bearing No.89501-00845 and one bundle of wires were loaded in the Saffron vehicle and all these things were taken away by accused persons. It was further alleged that when his labour came to the site at around 8.30 A.M., then they found that the watchman was tied with rope and they opened it after seeing him. The watchman told the whole story on his telephone.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner is not named in the FIR and he has been involved in the present case only on the basis of disclosure statement of the co-accused, which is hit by Section 26 of the Indian Evidence Act and petitioner is behind the bars for more than 07 months and the trial is likely to take long time to conclude.

4. Per contra, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground of seriousness and gravity of the offences. He further submitted that the vehicle used in the commission of offence was recovered from the possession of the petitioner.

5. Having heard learned counsel for the parties and perusing the records of the case, it transpires that the petitioner is behind the bars since 07.05.2023. Investigating Agency has concluded the investigation and final report under Section 173 Cr.P.C. has been presented before the concerned Court on 06.07.2023. Trial of the case has not made much progress as out of 24 witnesses cited by the prosecution, none has been examined so far. So, further incarceration of the petitioner without there being the prospect of the conclusion of the trial in the near future,

would be violative of Article 21 of the Constitution of India. Culpability, if any, would be determined at the time of trial.

A two Judge Bench of Hon'ble Supreme Court in '**Satender Kumar Antil v. CBI**' (2022) 10 SCC 51, with respect to prevailing conditions of undertrial prisoner in India has observed:

"6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other."

6. In view of the above, the present petition is allowed and petitioner- Ashnesh @ Ashneh Pathak is ordered to released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

7. Nothing observed hereinabove shall be construed as

expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

22.12.2023
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No