

CRM-M-1082-2024 (O & M)
Date of decision: 15.01.2024

...PETITIONER

V/S

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ivneet Singh Pabla, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR J. (ORAL)

This is the first petition filed under Section 439 of Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.458 dated 25.09.2022 registered under Sections 379-B, 34 of Indian Penal Code (Section 411 IPC added later on) at Police Station City Bahadurgarh, District Jhajjar.

2. The present case was lodged on the allegations that on 25.09.2022, the complainant was going to his house at Tikri Kalan from bus-stand Bahadurgarh in a three wheeler. Except the driver of three wheeler, two other boys were also sitting therein. At about 9:30 AM, when he reached near Relaxo Company MIE, the boy, sitting with him, pointed a sharp edged weapon like *darati* on his abdomen and the other boy snatched his mobile phone make Realme. The driver of the auto also snatched an amount of Rs.1,000/-. The boy gave beatings to him and got down him at Kodi Colony, MIE Part-A and fled away with auto. He (the complainant) noted the number of auto as HR-63D-7709 and overheard their names as Hemant, who was

driving three wheeler and other boys were Sanjay and Rahul (petitioner herein). Thereafter, the complainant called his father and brother Sunil at the spot and called at emergency No.112 and investigation was carried out.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case. The prosecution has relied upon one CCTV footage, however, the same is not part of the final report submitted under Section 173 Cr.P.C. before the concerned jurisdictional Court and there is a delay in filing of the present FIR and the petitioner is behind the bars since 25.09.2022. Trial of the case is progressing at snail's pace.

4. Per contra, the learned State counsel, on instructions from Inspector Ashok Kumar, opposes the prayer of grant of regular bail to the petitioner on the ground that petitioner is a habitual offender and he is involved in two more cases of similar nature, out of which, he is acquitted in one case and stands convicted in another case. Moreover, the mobile phone of the complainant has also been recovered from the possession of the petitioner.

5. 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. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 25.09.2022. Trial of the case has not made any progress yet as out of 15 witnesses cited by the prosecution, 09 have been examined so far. Culpability, if any, would be determined at the time of the trial. No useful purpose would be served by further detention of the accused-petitioner.
7. Keeping in view the law laid down by the Hon’ble Supreme Court of India in ‘Prabhakar Tewari Vs. State of U.P. and another’ 2020 (1) R.C.R. (Criminal 831) and ‘Maulana Mohd. Amir Rashadi Vs. State of U.P. and Another’, 2012 (2) SCC 382, the involvement of the petitioner in other cases would not be a ground to refuse grant of concession of regular bail.
8. In view the above, the present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial and the petitioner-Rahul is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.
9. 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.
10. Pending application(s), if any, also stand disposed of.

January 15, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |