

CRM-M-3552-2024
Date of decision: 30.01.2024

...PETITIONER

V/S

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Yashpal Thakur, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARPREET SINGH BRAR J. (ORAL)

This is the second petition filed under Section 439 Cr.P.C. seeking regular bail in a case bearing FIR No.37 dated 30.03.2021 registered under Sections 302, 307, 506, 148, 149 of Indian Penal Code and Sections 25/27 of Arms Act at Police Station Mullanpur, District SAS Nagar, Punjab. The earlier petition was withdrawn on 14.07.2023. Now, the material witnesses have been examined.

2. The present FIR was lodged on the allegations that on 29.03.2021 at about 2:30 PM, the complainant met Satnam Singh @ Satta and Sukhchain Singh and went to their farm house together. At the farm house, the complainant along with Satnam Singh @ Satta and Sukhchain Singh @ Sukhi, Gurinder Singh, Lovely, Binda were sitting, in the meantime, Inderjit Singh @ Inder came there, who was a friend of Lovely. Sukhchain Singh @ Sukhi and Inderjit Singh @ Inder started arguing with each other. Inderjit Singh @ Inder threatened Sukhchain Singh @ Sukhi and proclaimed that he has two rifles.

Sukhchain Singh @ Sukhi responded that he does not have any fear of his

weapon. Thereafter, Sukhchain Singh apologized and Inderjit Singh @ Inder got up from there and walked out. All of them along with the complainant came to Majra and while the complainant along with Satnam Singh @ Satta and Binda were sitting at the shop of Gurinder Singh, Lovely and Sukhchain Singh came there and informed them that some of their friends are calling them at Shiswan T-Point. At about 6:00 PM, complainant along with Satnam Singh @ Satta, Sukhchain Singh @ Sukhi, Gurinder Singh, Lovely and Binda reached on Pallanpur Road and after some arguments between them, Sukhbir Singh @ Billa fired a shot, which hit the chest of Satnam Singh on the left side. Thereafter, Sukhbir Singh @ Billa fired another shot towards the complainant which hit him on his left arm and after the scuffle, the other accused including the petitioner ran away from the spot and Satnam Singh @ Satta was taken to PGI Chandigarh for treatment, where he succumbed to injuries.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner is behind the bars since 01.04.2021 and no specific injury or role has been attributed to the petitioner. As per the case set up by the prosecution, Sukhbir Singh @ Billa is the main accused, who fired fatal shot, by which, Satnam Singh @ Satta has been killed. There is nothing on record to suggest that the petitioner can be held liable with the aid of Sections 148 or 149 of Indian Penal Code. Now the material witnesses have been examined and one of the injured witnesses namely Jagjit Singh @ Jaggi has not supported the case of the prosecution and learned Public Prosecutor has declared him hostile and one more witness Gurinder Singh has also not supported the case of the prosecution.

4. Per contra, the learned State counsel, on instructions from Investigating Officer, opposes the grant of regular bail to the petitioner on the ground that there is sufficient material available on record to indicate the

complicity of the petitioner in the alleged incident. The petitioner has taken active participation in the alleged murder of Satnam Singh @ Satta.

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 learned counsel for the parties and after perusing the records of the case, it transpires that petitioner is behind the bars since 01.04.2021. Material witnesses have already been examined. The petitioner is not involved in any other case and no overt act or injury has been attributed to him. No useful purpose would be served by further detention of the accused-petitioner. Keeping the petitioner in further detention, without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

7. Keeping in view the facts and circumstances of the case, the present petition is allowed without commenting upon the merits of the case lest

it may prejudice the outcome of the trial and the petitioner-Joginder Singh *alias* Jaggi 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.

8. 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.

January 30, 2024
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(HARPREET SINGH BRAR)
JUDGE

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