

215 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-3251-2024 (O&M)

Date of Decision: 29.01.2024

NASIM

...Petitioner

V/S

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Neeraj Saini, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG Haryana.

HARPREET SINGH BRAR J. (Oral)

1. This is the first petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 430 dated 20.10.2013 registered under Sections 395, 397, 201 of Indian Penal Code and Section 25 of Arms Act at Police Station Kherki Daula, District Gurugram.

2. Present FIR was registered at the instance of complainant Joginder Singh on the allegations that his driver Sukhwinder Singh informed him that on 20.10.2023, some assailants, who were armed with a revolver, knife and rods, forcibly entered his truck, and snatched his mobile phone and wallet at gun point. The assailants removed two batteries and 10 tyres of the trucks along with rims and bolts and left the truck on the cemented bricks. On the basis of the aforesaid complaint, the FIR(supra) was registered for the offences punishable under Section 395 of Indian Penal Code read with Section 25 of Arms Act. During investigation, two persons namely Jahid and Javed were

arrested and some tyres and rims of the truck were recovered from their possession and on the basis of their disclosure statements, other accused, including the present petitioner were nominated in the FIR. On completion of investigation, final report under Section 173 of Cr.P.C. was presented against the accused persons before the concerned Court.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case and he is behind the bars since 30.05.2023 and the main accused Javed, Jakir and Jahid have been acquitted by learned Additional Sessions Judge, Gurugram vide judgment and order dated 05.04.2016 and other co-accused namely Faram @ Farrukh and Saleem have been granted bail by the learned Additional Sessions Judge, Gurugram vide orders dated 10.07.2019 and 13.08.2019 respectively. Nothing has been recovered from the petitioner and petitioner was initially granted bail by the learned Additional Sessions Judge, Gurugram vide order dated 26.02.2021 (Annexure P-2). Thereafter, the petitioner could not join the trial proceedings due to some unavoidable circumstances and the bail granted to the petitioner vide the aforesaid order was cancelled.

4. Per contra, learned State counsel opposes the prayer of grant of regular bail to the petitioner on the ground that he is a habitual offender and involved in 05 more cases and earlier also he had absconded and P.O. proceedings were initiated against him.

5. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner was granted bail by the learned Additional Sessions Judge, Gurugram vide his order dated 26.02.2021 (Annexure P-2) and the other co-accused

have been acquitted by the learned Additional Sessions Judge, Gurugram vide his judgment and order dated 05.04.2016 and no recovery has been effected from the petitioner. Trial of the case is likely to take long time to conclude. 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 the 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 ratio of law laid down by Hon'ble Supreme Court in **Prabhakar Tiwari Vs. State of UP and Anr.** 2020(1) RCR

and Others 2012(2) SCC 382, the involvement of accused in other criminal cases cannot be the sole ground to deny him the concession of bail.

7. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner- Nasim 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.

29.01.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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