

CRM-M-5209-2024
Date of decision: 22.02.2024

...PETITIONER

V/S

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Mr. Atinderpal Singh, Advocate for the complainant.

HARPREET SINGH BRAR J. (ORAL)

This is the first petition under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 35 dated 09.04.2023 registered under Sections 302, 506, 148 and 149 of Indian Penal Code (Sections 302, 506 and 148 were deleted and offence under Section 304 of IPC was added vide Rapat No. 28 dated 18.05.2023) at Police Station Kathu Nangal, District Amritsar.

2. The present FIR was lodged on the statement of the complainant Jatinder Kumar on the allegations that on 09.04.2023 at around 5.30 PM, when he was stitching cloths in his house, he heard noise in the street and when he came out, he saw Fateh Singh, Amandeep Kaur, Harjit Singh @ Jeeta, Paramjit Singh, Pritam Singh, Dilbagh Singh (present petitioner), Heera, Sanjeev Bhaskar, Vikram Gill along with 6-7 unknown persons were scuffling with his father Rattan Lal, due to which his father fell down on the ground and complainant and his wife tried to rescue his father from the accused, but

accused persons started giving kick blows in the stomach of his father, while he was lying on the ground. After they raised alarm, many people gathered there and all the accused persons fled away from the spot and after arranging vehicle, the complainant took his father to Ranjit Hospital Kathu Nangal, where the doctor declared him as brought dead.

3. Learned counsel for the petitioner *inter alia* contends that similarly situated co-accused Dilbag Singh was granted the concession of regular bail by this Court vide order dated 21.12.2023 in case bearing CRM-M No.43874 of 2023 (Annexure P-2) passed by this Court. Learned counsel further contends that initially the FIR was registered under Section 302 of Indian Penal Code but after conclusion of the investigation, offences under Sections 302, 506, 149 of Indian Penal Code were deleted and offence under Section 304 of IPC was added vide DDR No. 28 dated 18.05.2023. It is further contended that no specific injury has been attributed to the petitioner and in the MLR only two injuries i.e. abrasions are found on the left side of the nose and under the left eye of the deceased. Further the Investigating Agency has declared 03 persons as innocent, while submitting the final report under Section 173 of Cr.P.C. The medical evidence is contradictory to the ocular evidence.

4. Per contra, learned State counsel assisted by learned counsel for the complainant has produced the custody certificate and on instructions from ASI Rachpal Singh, opposes the prayer for grant of regular bail to the petitioner on the ground that he has actively participated in the occurrence and his presence is duly established from the CCTV footage, however, learned State counsel could not controvert the fact that the petitioner is not involved in any other case and similarly situated co-accused has been granted the concession of regular bail by this Court.

5. Having heard learned counsel for the parties and perusing the record of the case, it transpires that the petitioner is behind the bars since 10.04.2023. Investigation of the case is complete and the final report under Section 173 Cr.P.C. was presented before the concerned Court on 07.06.2023. The trial of the case has not made much progress as out of 20 cited prosecution witnesses, none has been examined so far. Culpability, if any, would be determined at the time of trial.

6. 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."

7. In view of the above, the present petition is allowed and the petitioner-Fateh Singh 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.

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.

February 22, 2024
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(HARPREET SINGH BRAR)
JUDGE

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