

213 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH
CRM-M-4886-2024 (O&M)
Date of Decision: 05.02.2024

...Petitioner

V/S

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Anil Kumar Malik, 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. 425 dated 07.08.2023 registered under Sections 341, 323, 324, 307 and 34 of Indian Penal Code at Police Station City Fatehabad, District Fatehabad.
2. Present FIR was lodged on the complaint made by Bablu son of Ram Kishan on the allegations that he is doing scrap work (junk-dealer) in village Sisay, Hansi. On 07.08.2023, he and his younger brother Sunny, Suresh @ Keshu son of Dharampal and Vikram @ Vicky son of Mahabir, residents of village Jandwala Sottar, Fatehabad had come to Fatehabad Court for appearance in a case. In the year 2019, Lakhanpal son of Desh Raj Bawaria, resident of village Ayalki came to his house and quarreled with him, upon which they caused injuries to said Lakhanpal and in this regard a case was registered against him in Police Station Sadar, Fatehabad, due to said reason, Lakhan Pal and his friend Sonu son of Sher Singh and Rinku, residents of village Ayalki were having grudge against him.

Complainant further alleged that due to said grudge, on 07.08.2023, at about 2.45 P.M., when all of them were going to chamber of Advocate and reached in the gallery, near Chamber No. 158, then Lakhan Pal and his friends Sonu and Rinku stopped their way. Sonu gave stab (knife) blow on his chest, with intention to kill him; Lakhanpal threw cold glass bottle towards head of his brother Sunny, which hit wall and broke; and Rinku also threw cold glass bottle towards the complainant. Complainant further alleged that Lakhan Pal and his friends Sonu and Rinku caused injuries to them with knife, after blocking their way, without any reason and requested to take legal action against the assailants.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner was not named in the FIR. Initially three persons were named in the FIR and the injuries caused by sharp edged weapon have been specifically attributed to the co-accused Sonu son of Sher Singh. Thereafter the petitioner was nominated in the present case on the basis of supplementary statement made on the basis of CCTV footage. Learned counsel for the petitioner further contends that even in the CCTV footage, the petitioner is not the person who has caused injuries to the complainant and he is behind the bars since 16.08.2023 and not involved in any other case.

4. Per contra, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that there are specific and serious allegations levelled against the petitioner as such he does not deserve the concession of regular bail.

5. 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 16.08.2023. Investigating Agency has concluded the

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investigation and submitted the final report under Section 173 of Cr.P.C. on 03.11.2023. Trial of the case has not commenced as the case is fixed for 07.02.2024 in the trial Court for framing of charges. 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 above, the present petition is allowed and the petitioner- Sandeep 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.

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.

05.02.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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