

CRM-M-5873-2024
Date of decision: 08.02.2024

...PETITIONER

V/S

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Manjot Singh Gujral, Advocate
for the petitioner.

Mr. Manish Bansal, PP, U.T. Chandigarh and
Mr. Navjit Singh, Advocate.

HARPREET SINGH BRAR J. (ORAL)

This is the first petition filed under Section 439 Cr.P.C. seeking regular bail in a case bearing FIR No115 dated 03.05.2023 registered under Sections 406, 419, 420, 379, 411 and 34 of Indian Penal Code at Police Station Sector 36, District U.T. Chandigarh.

2. The present FIR was lodged on the statement made by complainant-Ravinder Kaur on the allegation that on 01.05.2023 at about 08:45 A.M. as per her routine, she was going to her office i.e. High Court on her Activa scooter and when she crossed Attawa *chowk*, two persons riding on motorcycle came from behind and asked her to stop. Both the persons asked the complainant that why she was wearing gold jewellery and both the assailants took the chain, ring and gold bangles of the complainant and they took the bag of the complainant on the pretext of putting the jewellery in the

bag. When the complainant reached her office and checked her bag, there was no jewellery in the bag.

3. Learned counsel for the petitioner *inter alia* contends that petitioner has not been named in the FIR, rather, he has been nominated only on the basis of disclosure statement made in another case and co-accused namely Ali Zama Zahoor Jafri was granted regular bail by this Court vide order dated 10.01.2024 in case bearing CRM-M No.58469 of 2023 (Annexure P-7) and the petitioner is behind the bars since 26.06.2023.

4. Per contra, the learned Public Prosecutor, on instructions from ASI Avtar Singh, opposes the grant of regular bail to the petitioner on the grounds that petitioner's identity is duly established on the basis of CCTV Camera footage and stolen articles of the complainant were recovered from the possession of the petitioner and he is involved in two more FIRs.

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 record of the case, it transpires that similarly situated co-accused was granted regular bail by this Court and the petitioner is behind the bars since 07.07.2023 as per custody certificate. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court on 28.08.2023. The trial of the case has not made much progress as none of the prosecution witnesses has been examined so far. The culpability, if any, would be determined at the time of trial. Perusal of the record indicates that the offence under Section 420 IPC would be a debatable issue and all other offences under which FIR was lodged are punishable up to three years. No useful purpose shall be served by further detention of the accused/petitioner.
7. Keeping in view the facts and circumstances of the case, the present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner, namely, Sultan Khan *alias* Amjad Ali *alias* Gabbar Ali *alias* Buru 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.

February 08, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

- (i)

Whether speaking/reasoned

Yes/No
- (ii)

Whether reportable

Yes/No