

217 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-6375-2024 (O&M)
Date of Decision: 12.02.2024

...Petitioner

V/S

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Dhruv Gupta, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG 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. 503 dated 08.09.2023 registered under Sections 406, 420, 120-B of Indian Penal Code at Police Station Ambala City, District Ambala.
2. Case of the prosecution is set up on the allegations that complainant and his wife Isha has given 300 grams of gold to the petitioner, who claimed himself to be engaged in making of gold jewellery in Ambala City Gold Market, since past 10 years. Petitioner and his wife had taken gold after giving assurance that they will do the needful soon. But thereafter the petitioner fled away and the complainant had no knowledge about his whereabouts and as such the complaint was filed and the present FIR was registered.
3. Learned counsel for the petitioner *inter alia* contends that prior to registration of the FIR, on 17.06.2023, a compromise was effected between the parties according to which the petitioner has given a gold testing

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machine along with other articles to the complainant and the value of the said products is Rs. 10-11 lac, as discernible from the compromise deed. In spite of receiving those items, the petitioner got involved in lodging the present FIR, that too after three months of the compromise. The petitioner is 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 petitioner has committed a heinous crime and there is sufficient material available on record to indicate his complicity in the alleged crime.

5. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is not involved in any other case and he is behind the bars since 04.10.2023. Investigating Agency has concluded the investigation and submitted the final report under Section 173 of Cr.P.C. on 20.11.2023. Trial of the case has not commenced as none out of 16 prosecution witnesses, has been examined so far. 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- Nilesh Anil Jamdade 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.

12.02.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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