

CRM-M-6954-2024

218 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-6954-2024 (O&M)

Date of Decision: 15.02.2024

SAHIL @ POHLA

...Petitioner

V/S

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Deepak Kumar, 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. 423 dated 12.12.2022 registered under Sections 323, 324, 302, 307, 325, 379-B, 427, 452, 506, 147, 148, 149, 120-B of Indian Penal Code and Sections 25/54/59 of Arms Act at Police Station Bhuna, District Fatehabad.

2. The present FIR was lodged on the statement of Garib Dass on the allegations that in the family of complainant, one Ramdas father of Manoj had expired and all were sitting at his home after the death of Ramdas and in the meanwhile, one, Kanshi Ram came on the kirana shop of complainant for getting the bundal of biddi then Shivam grandson of the complainant was sitting in the street due to death which has occurred in their family. He informed that biddi cannot be sold, then due to his refusal, Kanshi slapped on the face of Shivam and after some time, called 30-40 persons on spot who attacked with bricks and stones on their houses. Knife blow was given on the stomach of Mukesh son of the complainant, brick blow was given in the head of Ravi, serious injuries were caused on the finger and thumb of

Ramesh and entire belongings in the house were broken. It is further alleged that they had also snatched the gold chain from the neck of Mukesh.

3. Learned counsel for the petitioner *inter alia* contends that petitioner is at par with the co-accused Deepak, Sanjay, Vakil @ Gokal, Suresh and Ram Niwas as the petitioner including the aforementioned persons have been nominated as accused in the present FIR only on the basis of disclosure statement suffered by the co-accused while in police custody, which is hit by Section 27 of Indian Evidence Act and Co-ordinate Bench of this Court has granted anticipatory bail to the similarly situated co-accused namely Suresh vide order dated 17.05.2023 passed in CRM-M-22135-2023. Learned counsel for the petitioner further contends that the injury attracting the offence under Section 302 of Indian Penal Code is specifically attributed to the co-accused Sandeep @ Bachi. Moreover, the cause of death according to the post-mortem report is respiratory failure and it would be a moot point to be determined by the learned trial Court as to whether the case of death is a result of injuries or not.

4. Per contra, learned State counsel on instructions from ASI Dalbir Singh, opposes the prayer of regular bail to the petitioner on the ground that he being the member of unlawful assembly, has actively participated in the alleged occurrence. Custody certificate filed by learned State counsel is taken on record.

5. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that petitioner is behind the bars since 21.12.2022 and has undergone custody of more than 01 year 01 month and 22 days as on 13.02.2024. He is not involved in any other case.

Investigation of the case has been concluded by the Investigating Agency

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and the final report under Section 173 of Cr.P.C. has been submitted on 12.03.2024. Trial of the case has not commenced as no prosecution witness 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."

7. Therefore, without commenting upon the merits of the case, lest it may prejudice the outcome of the trial, the present petition is allowed and the petitioner-Sahil @ Pola is ordered to be released on regular bail during

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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.

15.02.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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