

CRM-M-8061-2024
Date of decision: 20.02.2024

JogenderPetitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sourabh Sheoran, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. seeking regular bail to the petitioner in case bearing FIR No.58 dated 26.04.2023 under Sections 307/387/506/34 of IPC and Section 25 of Arms Act (Sections 201/216/120-B of IPC and Section 27 of Arms Act were added later on and Section 34 IPC was deleted) registered at Police Station Satnali, District Mahendergarh.

The FIR (*supra*) was lodged on the allegation that on 26.04.2023, the complainant was present at the shop. Thereafter, three boys came on a motorcycle and two boys including one, Dholia Tanwar (the present petitioner) were armed with weapons. The accused demanded Rs.50 lakhs from the complainant and when the complainant refused, the petitioner fired two shots on the complainant but he managed to escape. However, one of the shots was hit the co-accused and thereafter, all the assailants ran away from the spot.

Learned counsel for the petitioner *inter alia* contends that there is

nothing on record to suggest that the offence under Section 307 of IPC is made

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out. Admittedly, the complainant has not suffered any injury and only one empty cartridge was recovered at the spot and all other co-accused have been granted the concession of regular bail by the learned Additional Sessions Judge, Narnaul. He further submits that the petitioner is behind the bars since 08.05.2023.

Learned counsel for the petitioner further submits that the petitioner is involved in 08 more cases out of which, he has already been acquitted in 03 cases, has already undergone the sentence in 01 case and in 02 cases, he is already on bail.

Per contra, the learned State counsel opposes the grant of regular bail to the petitioner on the ground that he has been specifically named in the FIR and even in the absence of injury, the intention of the petitioner to commit murder of the complainant is clearly discernible. He further submits that the petitioner is a habitual offender and involved in 08 more cases.

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.”

Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 08.05.2023. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case has not made much progress as none out of 07 prosecution witnesses has been examined so far. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

Keeping in view the law laid down by the Hon’ble Supreme Court of India in ‘Prabhakar Tewari Vs. State of U.P. and another’ 2020 (1) R.C.R. (Criminal 831) and ‘Maulana Mohd. Amir Rashadi Vs. State of U.P. and Another’, 2012 (2) SCC 382, the involvement of the petitioner in other cases would not be a ground to refuse grant of concession of regular bail.

In view the above, 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-Jogender 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.

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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.

(HARPREET SINGH BRAR)
JUDGE

20.02.2024
Neha

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