

Date of decision: 21.02.2024

....Petitioner

State of Haryana and another

...Respondents

Present: Mr. Kushagra Beniwal, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

CRM-7215-2024

Learned counsel for the petitioner wishes to withdraw the present application.

Dismissed as withdrawn.

CRM-M-8267-2024

The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.526 dated 27.07.2023 (Annexure P-1) under Sections 148/149/307/323/324/326/379-B of IPC (Sections 148/149/326 of IPC added later on and Section 34 of IPC deleted later on) registered at Police Station Thanesar Sadar, District Kurukshetra.

The present FIR was registered on the allegation that during the intervening night of 26th/27th July, 2023, an information was received from LNJP Hospital with regard to the admission of injured namely Smile due to injuries suffered in his scuffle. The statement of the injured was not recorded as he was referred to PGI, Chandigarh. The statement of the uncle of the injured

was recorded in which he stated that on 26.07.2023, his nephew-Smile was given injuries by Amit, DXX (Juvenile) and other boys with knife and his nephew has narrated the entire incident while he was taking him to the hospital. The injured has alleged that DXX (Juvenile) has caught hold of him and Amit gave him knife blows in stomach and thereafter, they snatched his silver chain and he became unconscious.

Learned counsel for the petitioner *inter alia* contends that the petitioner is not named in the FIR and no specific role is attributed to him. Admittedly, the injury which attracts Section 307 of IPC has been attributed to the main accused-Amit and the injured was caught hold by another co-accused-DXX (Juvenile). As such, there is nothing on record to prove the complicity of the petitioner in the alleged offence. He further submits that the petitioner is behind the bars since 30.10.2023. He is having clean antecedents and only 19 years of age. Moreover, the complainant has now effected compromise with the petitioner which is available on record as Annexure P-4. The complainant has categorically stated that after inquiring from his nephew-Smile, he found that the petitioner is not involved in the alleged incident and he has never seen the petitioner before.

Per contra, the learned State counsel opposes the grant of regular bail to the petitioner on the ground that it is a matter of trial whether the petitioner has actively participated in the incident or not and there is sufficient evidence available on record to establish the involvement of the petitioner in the alleged incident.

Mr. Pawan Attri, Advocate puts in appearance on behalf of respondent No.2 and files his power of attorney in the Court today which is

taken on record. He submits that the petitioner was involved in the present case due to some misconception and in fact, he is not the person who is involved in the current case. He further submits that he has no objection if the present petitioner is granted regular bail.

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 30.10.2023. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court on 18.11.2023 and trial of the case has not yet commenced as none out of 19 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 age of the petitioner and the fact that the is not involved in any other 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-Rakesh 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.

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

21.02.2024
Neha

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