

CRM-M-11181-2024 titled as ***Jatinder Singh @ Soni Vs. State of Punjab.***

2. These petitions have been filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioners in the case bearing FIR No.83 dated 19.10.2023 registered under Sections 25(6) and 25(7) of Arms Act, 1959 at Police Station Dhakoli, District SAS Nagar (Mohali).

3. The present FIR was lodged on the allegations that on 19.10.2023, it was revealed to the complainant that the petitioners and one co-accused are coming on motor-cycles armed with weapons and they are going to commit a crime and in case, the picket is laid, they all can be intercepted. Finding the information credible, the FIR was registered and all the petitioners along with co-accused were intercepted and one 32 bore pistol, 03 live cartridges of 32 bore were recovered from the petitioner-Jatinder Singh @ Soni and one pistol each has been recovered from petitioners Lakhvir Kumar @ Lucky and Gurwinder Singh @ Mattu.

4. Learned counsel(s) for the petitioners *inter alia* contend that the petitioners are having clean antecedents as they are not involved in any organized crime, syndicate or group, as alleged in the FIR and they have been falsely implicated in the present case and recovery of illegal weapons and cartridges has been planted upon them. The investigating agency has already concluded the investigation.

5. Per contra, learned State counsel, on instructions from ASI Mewa Singh, opposes the prayer for grant of regular bail to the petitioner on the ground that illegal weapons were recovered from the possession of the petitioners and in case, they would not have been arrested, some heinous crime could have been committed by them. Custody certificates filed by the respondent-State are taken on record.

6. 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. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the investigating agency has already concluded the investigation and submitted the final report under Section 173 Cr.P.C. on 16.01.2024. The trial of the case has not made much progress, as out of 16 witnesses cited by the prosecution, none has been examined so far. Culpability, if any, would be determined at the time of the trial. Keeping the petitioners in further detention, without the prospect of the trial being concluded in the near future, would be violative of their rights under Article 21 of the Constitution of India.

8. Accordingly, the present petitions are allowed. The petitioners- Jatinder Singh @ Soni, Lakhvir kumar @ lucky and Gurwinder Singh alias

Mattu are ordered to be released on regular bail, subject to their furnishing bail/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

9. Learned counsel(s) for the petitioners submit that as pointed out by learned State counsel, the offence under Section 411 of IPC is added in the FIR.

10. Learned counsel(s) for the petitioners submit that the aforesaid omission had occurred due to inadvertence and requested this Court to add Section 411 of Indian Penal Code in the headnote as well as prayer clause of the present petitions.

11. Keeping in view the facts and circumstances of the case, Section 411 of Indian Penal Code be added in FIR No.83 dated 19.10.2023, in this order and the Registry is directed to include Section 411 of IPC in the head note as well as in the prayer clause of these petitions.

12. 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.

March 07, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |