

Sunil alias Kala alias Balwant ...Petitioner

State of Haryana ...Respondent

Present: Mr. Ramnish Puri, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

The present FIR was lodged on the allegations that on 03.11.2021, complainant-Vinod Kumar made a statement that he was the manager of Modern Mega Store, Azad Nagar. On 03.11.2021, at about 4:00 p.m., he was standing in front of his store. His elder brother Sujinder was also standing about 20-25 steps away from the store. In the meantime, three young boys came on a motorcycle and two boys fired upon his brother Sujinder with an intention to kill him. Thereafter, all the three assailants fled away from the spot. The complainant took his injured brother to Sapra Hospital, Hisar where he underwent treatment. He stated that he can identify the assailants, if produced before him. On this information and on the basis of MLR etc., FIR under sections 307, 285, 34 IPC and 25 of Arms Act was registered. During the course

of investigation, on 23.11.2021, accused-Rohit @ Patwari was arrested. He got demarcated the place of occurrence. Accused/petitioner-Sunil alias Kala alias Balwant was arrested in the present case on 07.01.2022. During further investigation, offence under section 201 IPC was added in the FIR. On 17.11.2022, co-accused Baljeet was joined in the investigation. He was arrested in this case also. He suffered disclosure statement regarding his involvement in this case. After completion of necessary investigation, police report under Section 173 Cr.P.C. was prepared and submitted in the Court.

Learned counsel for the petitioner *inter alia* contends that the first petition for grant of regular bail was dismissed as withdrawn vide order dated 06.07.2023 and thereafter, the complainant-Vinod and injured-Sujinder were examined by the learned trial Court as PW-1 & PW-3, respectively and both of them have not supported the case of the prosecution and have been declared hostile. He further submits that similarly situated co-accused, namely, Pardeep, Baljeet Singh and Sajjan @ Kala, have been granted the concession of regular bail by this Court vide common order dated 27.02.2024 passed in CRM-M-60426-2023 (O&M), CRM-M-3329-2024 (O&M) and CRM-M-4873-2024 (O&M), respectively (Annexure P-8). It is further submitted that the case of the petitioner is at par with the aforementioned co-accused as petitioner is also implicated in the present case on the basis of disclosure statement which has been suffered while in police custody which has no evidentiary value in the eyes of law.

Per contra, the learned State counsel opposes the grant of regular bail to the petitioner on the ground that he is involved in number of cases and he is a habitual offender, as such, he does not deserve the concession of regular

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bail. Further, the learned State counsel could not controvert the fact that the material witnesses have already been examined by the learned trial Court.

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 08.01.2022 and he has already undergone more than 02 years 03 months and 20 days as on 27.04.2024. Similarly situated co-accused, namely, Pardeep, Baljeet Singh and Sajjan @ Kala, have been granted the concession of regular bail by this Court vide common order dated 27.02.2024 passed in CRM-M-60426-2023 (O&M), CRM-M-3329-2024 (O&M) and CRM-M-4873-2024 (O&M),

respectively (Annexure P-8). Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case is progressing at snail’s pace as only 03 out of 39 prosecution witnesses have 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-Sunil alias Kala alias Balwant 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

29.04.2024
Neha

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