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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-11209-2024

Date of decision: 21.08.2024

Gurwinder Singh @ Gobinda

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Munish Bhardwaj, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

This second petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.273 dated 28.10.2022 under Section 379-B of IPC (Section 411 of IPC added later on) registered at Police Station Tanda, District Hoshiarpur. First bail application was dismissed as withdrawn vide order dated 08.12.2023.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that at around 03:15 P.M. in the evening, she along with her mother was going from Tanda towards Tahli on their scooter and when they reached at Sahibazpur near Marry School, two young Mullah Fashion youth came on a motorcycle from Tanda side and stopped us and showed *datar* to them and asked them to take out what they had. It is further alleged that they snatched cash of Rs.50,000/- along with earrings, ring and *koka* and also snatched cash from



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her mother and ran away and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the petitioner is not named in the FIR and even test identification parade was never conducted to ascertain the identity of the petitioner and it would be a moot point to be decided by the learned trial Court. He further submits that the co-accused, namely, Harvinder Singh @ Binder, who got recovered the currency notes of Rs.4650/-, has been granted the concession of regular bail by the learned trial Court. The petitioner is behind the bars since 23.02.2023 and after his arrest, number of cases have been foisted upon him by the jurisdictional police authorities and in most of the cases the petitioner is on bail. He further submits that the minimum sentence provided under Section 379-B of IPC is upto five years and trial of the case is progressing at the snail's pace.

The learned State counsel has filed custody certificate in the Court today which is taken on record and per contra, opposes the grant of regular bail to the petitioner on the ground that *datar* used in the commission of offence has been recovered on personal disclosure statement made by the petitioner and he is involved in 17 more cases and is convicted in three cases and as such, he is a habitual offender and thus, does not deserve the concession of 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 23.02.2023. 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 even reached half way mark as only 02 out of 12 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



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the trial, the petitioner-Gurwinder Singh @ Gobinda 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

21.08.2024
Neha

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