

CRM-M-13245-2024 (O&M)
Date of decision: 20.03.2024

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Paras Jagga, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.91 dated 11.08.2023 under Sections 307/325/323/326/336/341/279/148/149 of IPC (Section 201 of IPC added later on) registered at Police Station Anaj Mandi, District Patiala (Annexure P-1).

The present FIR was lodged on the allegations that on 10.08.2023 at about 8:00 PM, the accused along with the petitioner armed with *dandas*, iron pipes and *kirchs* gave injuries to the son of complainant and Noordeep Kaur informed the complainant that Harpreet Singh @ Sunny, Harinder and Jashan Dhiman had given beatings to both of them with *dandas*, iron pipes and Harpreet Singh @ Sunny gave an iron pipe blow to Maninder Singh (complainant's son) on his left arm with force. Then Raja Boxer and Jaskaran Singh Tom raised a *lalkara* that both of them should not escape alive today. Then Raja Boxer took *kirch* out of his dab (pant fold) and gave two consecutive

blows to Maninder Singh in his abdomen with an intention to kill and he fell down. When Noordeep Kaur raised alarm saying “*bachao-bachao*”, then Raja Boxer gave a *kirch* blow on her left ear and when she tried to turn her face other side, Raja Boxer gave another *kirch* blow on the back side of her head. When people started gathering at the spot, then all of them drove away from the spot in car.

Learned counsel for the petitioner *inter alia* contends that the petitioner is not named in the FIR and no specific role or injury has been attributed to him. He further submits that two of the co-accused, who have been attributed specific role, namely, Harinderjit Singh alias Jot and Lucky Pandey have been granted the concession of regular bail by this Court vide order dated 09.02.2024 passed in CRM-M-6130-2024 titled as ‘Harinderjit Singh alias Jot Vs. State of Punjab’ and vide order dated 05.03.2024 passed in CRM-M-10713-2024 titled as ‘Lucky Pandey Vs. State of Punjab,’ respectively (Annexures P-4 & P-5, respectively) and moreover, the medical opinion is totally silent about the nature of the injury being dangerous to life. Son of the complainant is a notorious person and is already involved in 11 FIRs.

Per contra, the learned State counsel, on instructions from ASI Raj Singh, opposes the grant of regular bail to the petitioner on the ground that his role has been clearly established and he has actively participated in the alleged incident and the car in which the assailants came to the spot, is registered in the name of the father of the petitioner. He further submits that the petitioner is involved in two 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 26.09.2023. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court on 29.11.2023 and trial of the case has not made much progress as out of 36 prosecution witnesses none 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-Yash Sharma @ Bholla 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

20.03.2024
Neha

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