

asked for cash and jewellery and threatened him to death. His friends, Mahavir and Karan tried to overpower those boys and out this scuffle, one boy gave blow of but of pistol on the head of Mahavir but he escaped by raising his left hand on which he sustained injuries. In this altercation, all of them came in drawing room where one bottle of oil kept on the fridge fell down and the oil scattered on floor, as a result of which, both robbers slipped on the floor and fell down after striking on the wall due to which they sustained injuries on their hand and body due to which they sat on the floor and weapons also got slipped from their hands. The complainant called the police who reached at the spot. The police got recovered two country made pistol out of which one was loaded with two live cartridges 315 bore and three mobile phones and one purse and Aadhar Card of one, Nikhil from the spot.

Learned counsel for the petitioner *inter alia* contends that the petitioner is not named in the FIR and even as per the case set up by the prosecution, he has not participated in the incident in any manner and he has been involved in the present case only on the basis of disclosure statement suffered by co-accused while in police custody which has no evidentiary value in the eyes of law and also the same is hit by Section 26 of the Indian Evidence Act. It is further contended that the petitioner is arrayed as an accused after adding of Section 120-B of IPC and there is nothing on record to prove the culpable intention of the petitioner to breach the threshold of Section 120-B of IPC.

Learned counsel for the petitioner has very fairly given the criminal antecedents of the petitioner in para 10 of the petition and submits that he is on bail and in some cases, he has been acquitted.

Per contra, the learned State counsel opposes the grant of regular bail to the petitioner on the ground that his complicity is writ large as he has supplied the weapons to the other co-accused and it is only due to the timely intervention of the jurisdictional police authorities that major crime has been averted .

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 weapons allegedly supplied by the petitioner were not used in any crime. 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 made much progress as out of 18 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-Anshul @ Khanna 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

21.03.2024
Neha

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