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

CRM-M-22888-2024

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.14 dated 11.01.2023 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 First bail application was dismissed as withdrawn vide order dated 08.12.2023.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 on 11.01.2023 when he was going to his house after closing his shop and carrying around Rs.2 lakh in his hand back, near the gate of his house at about 08:00 to 10:00 P.M., two unidentified boys came on a motorcycle, sprayed something in his eyes and snatched his bag and took away his money. It is further alleged that besides money, there were two cheques of Citizen Bank and cash copies of the shop and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the petitioner was arrested in the present case while he was in custody in another



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case and was not named in the FIR. He further submits that even test identification parade was not conducted by the Investigating Officer to establish the identity of the petitioner and after the arrest of the petitioner on 22.02.2023, number of cases have been foisted upon him by the jurisdictional police authorities. The petitioner is on bail in majority of the cases and in this case, he is behind the bars since 26.02.2023 and the co-accused, namely, Harvinder Singh @ Binder has already been granted regular bail on 19.03.2024 (Annexure P-3) by the learned Additional Sessions Judge, Hoshiarpur.

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 currency notes of Rs.2700/- have been recovered from him on the basis of disclosure statement made by him.

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 26.02.2023 as per custody certificate. 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 11 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-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