

CRM-M-27781-2023
Date of decision: 19.01.2024

Shashi KumarPetitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Jannat Duhan, Advocate and
Mr. Saksham Malhotra, Advocate
for the petitioner.

Mr. Sandeep Godara, Addl.A.G., Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. seeking regular bail to the petitioner in case bearing FIR No.154 dated 10.09.2022 under Section 115 of IPC read with Sections 302/120-B of IPC and Section 25 of Arms Act, 1959 registered at Police Station City Nawanshahr, District SBS Nagar (Annexure P-1).

The present FIR was lodged on the allegations that on 10.09.2022, Inspector Avtar Singh received a secret information that Rohit Kumar, Om Bahadur @ Sahil along with their companions Rajinder Singh @ Nandi, Gurpreet Gopi, Ranjodh Singh @ Jodha, Shashi Kumar (the present petitioner) and Rupesh Kumar, on the instructions of Amritpal Singh, who was then residing at USA in order to commit murder of some person, armed with arms and ammunitions were roaming in the area of Nawanshahr on scooter bearing No. PB-09-AB-1695 and motorcycle bearing No. PB-32-Z-7604. Thereafter, on the basis of secret information, all the aforementioned accused persons including the petitioner were apprehended by the police while coming on the

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aforesaid scooter and the motorcycle. Rohit Kumar was apprehended along with one country made pistol and four live cartridges, Gurpreet Singh was apprehended along with one magazine of pistol and three live cartridges and Rajinder Nandi was apprehended along with four live cartridges. During investigation, the accused/petitioner along with co-accused confessed that they were planning to commit murder of Gurpreet Gopi a prime witness in Sukha Kahlawan case on the instructions of Amritpal Singh and further they were to collect ransom from the owner of Richi Travel after firing upon him. It is further alleged that at the time of their apprehension co-accused-Om Bahadur was driving motorcycle bearing No. PB-32-Z-7604, whereas, Rajinder Singh alias Nandi, Shashi Kumar (the present petitioner) and Rupesh Kumar were the pillion riders on his motorcycle, which is registered in the name of his mother, Shobha Rani. Even co-accused-Om Bahadur arranged for the residence of Rupesh Kumar, Rajinder Nandi, Ranjodh Singh, Gurpreet Gopi and the present petitioner in Shavalik Enclave, Chandigarh Road, Nawanshahr. Further on 10.09.2022, at the asking of Amritpal Singh, co-accused-Om Bahadur along with Gurpreet Gopi, had collected weapons from one unidentified person.

Learned counsel for the petitioner *inter alia* contends that the petitioner is in custody since 02.09.2022. The Investigating Agency has already concluded the investigation and presented the final report. The co-accused, namely, Om Bahadur @ Sahil, Ranjodh Singh @ Jodha, Rajinder @ Rajinder Singh @ Nandi have been granted the concession of regular bail vide order dated 24.04.2023 passed by this Court in CRM-M-8747-2023 (Annexure P-2). She further submits that the recovery of weapons were made from the aforementioned three co-accused who have been granted regular bail by this

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Court and nothing has been recovered from the possession of the petitioner and all other co-accused have been released on regular bail except the petitioner.

Per contra, the learned State counsel opposes the grant of bail to the petitioner on the ground that sufficient material is available on record to indicate the complicity of the petitioner in the alleged occurrence. He further submits that the petitioner is a habitual offender, involved in two more cases and acquitted in one case.

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 perusing the record of the case, it transpires that the petitioner is behind the bars since 14.09.2022 and the case of the petitioner is at par with the co-accused who have

been granted regular bail vide order dated 24.04.2023 passed by this Court in CRM-M-8747-2023 (Annexure P-2). Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court. The trial of the case would take long time to conclude.

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-Shashi Kumar 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

19.01.2024
Neha

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