

complainant-Onkar Singh along with his brother, Mohit @ Molla had gone to the shop of Bunty Painter, Mohalla Dabbipura, Basti Guzan, Jalandhar to have paint on his Active Scooter at around 06:30 P.M. Acchi along with Deepu and Pankaj @ Tulli was standing on the roof of his house. On seeing the complainant, they started raising *lalkaras* and exhorted upon to catch hold complainant-Onkar Singh. In the meantime, Sunny @ Sunit, Abhi, Sam and Rahul arrived there with *datars*, *kirpans* and baseball bats. Abhi gave a *datar* blow from the reverse side, which hit in the left flank of chest of complainant, Abhi gave another *datar* blow from sharp side with intent to kill upon the head of complainant, but the same landed on the little finger of left hand of complainant when he raised left hand to save his head. Thereafter, accused-Sunny gave *kirpan* blow from the sharp side towards head with intent to kill complainant, but the same landed upon the middle finger of the right hand of complainant. Consequently, complainant fell down and thereafter, all the assailants gave multiple blows with their respective weapons upon the complainant and fled away after snatching Rs.7,500/- from the pocket of complainant.

Learned counsel for the petitioners *inter alia* contend that the allegations for which offence under Section 397 of IPC is added are not attributed to the petitioners. Rs.7,500/- were snatched by co-accused, Acchi and the petitioners have been attributed injuries and after due deliberation as there was a delay of seven days in lodging of the FIR, the petitioners are in custody since 25.02.2023. The prosecution has not examined even a single witness till date and also charges have not been framed so far.

Per contra, the learned State counsel on instructions from ASI

Varinder Singh, opposes the grant of regular bail to the petitioners on the ground that petitioner-Abhi is involved in five more cases and petitioner-Sunny Nahar @ Sunit @ Sunil, is involved in three more cases and out of 09 injuries, 03 injuries have been attributed to the petitioners. However, the learned State counsel could not controvert the fact that the trial of the case has not commenced yet.

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 petitioners are behind the bars since 25.02.2023. Investigation is complete. The final report under Section 173

Cr.P.C. was presented before the concerned Court on 10.07.2023 and trial of the case has not made much progress as out of 10 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/petitioners. Keeping the petitioners in further detention without the prospect of the trial being concluded in the near future, would be violative of their 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 petitioners in other cases would not be a ground to refuse grant of concession of regular bail.

In view the above, the present petitions are allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioners-Abhi and Sunny Nahar @ Sunit @ Sunil are ordered to be released on regular bail during trial on their 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

18.03.2024
Neha

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