

207 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-42904-2023 (O&M)
Date of Decision: 09.02.2024

...Petitioner

V/S

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Deepak Arora, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG Punjab.

HARPREET SINGH BRAR J. (Oral)

1. This is the first petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 109 dated 27.05.2023 registered under Sections 379-B, 411 and 34 of Indian Penal Code at Police Station Station Division No. 8, Police Commissionerate, Ludhiana.

2. Present FIR was lodged on the complaint made by Sajna Kapur-complainant on the allegations that on 26.05.2023, she after leaving the office Joyalukkas Jewellery, Rani Jhansi Road, Mandi, Ludhiana, at around 8:20 pm, was going to her house on foot and when she reached near HDFC Bank and was attending a phone call from her sister, two persons came from behind on a motor cycle and snatched the mobile phone of the complainant and fled away from the spot on the motor cycle. It has further been alleged that she had noticed the Registration Number of the motor cycle as PB-10-FM-1908 and further she could also identify the accused in case they are brought in front of her. On the basis of these allegations, the FIR(supra)

was registered.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner is not named in the FIR and no test identification parade was conducted to establish the identity of the petitioner. Investigating Agency has already concluded the investigation and petitioner is behind the bars for more than 08 months.

4. Per contra, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that he is involved in one more case of similar nature and the stolen mobile phone has been recovered from the possession of the petitioner and as such his role in the alleged occurrence has been duly established.

5. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 27.05.2023. Investigating Agency has concluded the investigation and submitted the final report under Section 173 of Cr.P.C. on 24.07.2023. Trial of the case has not commenced as none out of 10 prosecution witnesses, has been examined so far. So further incarceration of the petitioner without there being the prospect of the conclusion of the trial in the near future, would be violative of Article 21 of the Constitution of India. Culpability, if any, would be determined at the time of the trial.

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.”

6. In view of the ratio of law laid down by Hon’ble Supreme Court in ***Prabhakar Tiwari Vs. State of UP and Anr.*** 2020(1) RCR (Criminal) 831 and ***Maulana Mohd. Amir Rashadi Vs. State of U.P. and Others*** 2012(2) SCC 382, the involvement of accused in other criminal cases cannot be the sole ground to deny him the concession of bail.

7. In view of the above, the present petition is allowed and the petitioner- Umer Khan 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.

8. 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.

09.02.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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