

CRM-M-45757-2023
Date of decision: 24.01.2024

Versus

State of Haryana ...Respondent

Present: Mr. Ashish Gupta, Advocate and
Mr. Varun Gupta, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.121 dated 27.02.2023 under Sections 307/120-B of IPC and Section 25 (1-B) (a) of Arms Act (challan presented under Sections 307/34 of IPC and Section 25 (1-B) (a) of Arms Act and offence under Section 120-B of IPC was deleted and Section 34 of IPC was added later on) registered at Police Station Pataudi, District Gurugram.

The present FIR was lodged on the statement made by Raj Kamal on the allegation that on 26.02.2023 in the evening hours, he along with his friend, Pardeep and Ravinder were going on his vehicle to meet Gaurav. After meeting Gaurav, they went to meet Mohit. The present petitioner, Anand Gujar and Bhupender were already present in the house of Mohit. It is further alleged that about 08-10 days ago, Anand Gujar had exchanged hot words with the complainant on phone and he had threatened to kill the complainant and now,

he had caught hold him in the house of Mohit and Bhupender @ Bhim gave him slaps and petitioner fired a gun shot on his right hand and stomach in order to kill him. After hearing the gun shot, his friend, Pardeep and Ravinder along with other villagers gathered there. In the meantime, the petitioner along with his co-accused, fled away from the spot.

Learned counsel for the petitioner *inter alia* contends that the petitioner is behind the bars since 28.02.2023 and refers to the medical record (Annexure P-2) and submits that injuries on the person of the complainant were found to be simple in nature and he was discharged in satisfactory condition after one day of his admission in the hospital. The trial of the case is progressing at snail's pace. Moreover, two of the eye-witnesses, namely, Yogesh and Mohit have not supported the case of the prosecution. He further submits that petitioner is not involved in any other case.

Per contra, the learned State counsel has filed custody certificate which is taken on record and opposes the grant of regular bail to the petitioner on the ground that the petitioner is the main accused and intention to commit murder is apparent. He further submits that the weapon of offence was recovered from the petitioner, as such, keeping in view the seriousness of the crime, petitioner is not entitled to bail.

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 not involved in any other case and the custody certificate produced by the learned State counsel indicates that the petitioner is behind the bars since 02.03.2023. 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 only 05 out of 29 prosecution witnesses have 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. In view of 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-Hitesh @ David 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

24.01.2024
Neha

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