

CRM-M-48617-2023

210 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-48617-2023 (O&M)
Date of Decision: 18.01.2024

MANDEEP @ FOUJI

...Petitioner

V/S

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Manvender Singh Dalal, Advocate
for the petitioner.

Mr. Harish Mehla, Advocate
for the complainant.

Ms. Geeta Sharma, DAG Haryana.

HARPREET SINGH BRAR J. (Oral)

CRM-2281-2024

This is an application application under Section 482 of Cr.P.C. seeking permission for placing on record the compromise deed dated 11.12.2023 as Annexure P-4.

In view of the grounds pleaded in the application, same is allowed and compromise deed dated 11.12.2023 is taken on record as Annexure P-4. Registry is directed to tag the same at the appropriate place.

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1. This is the first petition under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 101 dated 08.04.2023 registered under Sections 307, 506, 120-B, 212 of Indian Penal Code and Sections 25(1B)(a) and Section 27(2) of Arms Act at Police Station Sadar Kaithal, District Kaithal.

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2. Present FIR was lodged on the allegations that on 08.04.2023, gun shots were fired upon the complainant-Sumeet @ Sethi by the petitioner and his friends, on account of previous enmity. Even earlier to the present occasion, on 5.04.2023, they had an altercation with the complainant and his brother. The gun shots fired by the petitioner hit the wall as the complainant and his friends saved themselves by taking shelter behind the wall.

3. Learned counsel for the petitioner *inter alia* contends that it is a case of no injury. Two persons i.e. the present petitioner along with Mukender @ Malinder @ Malli have been alleged to have fired the gun shots and the co-accused of the petitioner namely Sahil has been granted the concession of regular bail by the learned trial Court vide order dated 21.07.2023 (Annexure P-3). The petitioner is behind the bars since 25.04.2023 and now the parties have compromised the matter. Learned counsel further submits that even the complainant has appeared before the learned trial Court and has not supported the case of the prosecution and has been declared hostile.

4. Mr. Harish Mehla, Advocate has put in appearance on behalf of the complainant and submits that he has no objection in case the petitioner is enlarged on bail.

5. Per contra, learned State counsel opposes the prayer of grant of regular bail to the petitioner on the ground that petitioner is a habitual offender and involved in many other cases and as such he is not entitled to the concession of bail.

6. Having heard the learned counsel for the parties and after perusing the record, it transpires that petitioner is behind the bars since

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25.04.2023 and material witnesses have already been examined. Moreover, the complainant has not supported the case of the prosecution. Culpability, if any, would be determined at the time of 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.”

7. In view of the above, the present petition is allowed and petitioner-Mandeep @ Fouji is ordered to be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty

Magistrate.

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.

18.01.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No