

CRA-S-3289-2024 (O&M)
Date of decision: 14.10.2024

...APPELLANT

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

Present: Mr. Pankaj Bali, Advocate
for the appellant.

Ms. Geeta Sharma, DAG Haryana.

HARPREET SINGH BRAR J. (ORAL)

1. Present appeal has been filed against the order dated 24.09.2024 passed by learned Additional Sessions Judge, Karnal, vide which the application seeking regular bail to the appellant has been dismissed in case bearing FIR No. 71 dated 11.02.2021 registered under Sections 148, 149, 307, 354, 427, 436, 506, 323, 452, 120-B of Indian Penal Code, Sections 25/54/59 of Arms Act and Sections 3(1)(s), 3(1)(2), 3(2)(iii), 3(2)(iv), 3(2)(va) and 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act at Police Station Sector 32-33 Karnal.

2. The FIR(supra) was lodged on the complaint made by complainant Saroj on the allegations that on 11/02/2021, at about 2:30 pm 1) Site 2) Sahil 3) Aman/Chattha 4) Sachin 5) Kanshi 6) Sandeep 7) Monty 8) Shubham 9) Bhola Kashyap 10) Karan Pandit 11) Roshan Pandit 12) Deepak and other 150-200 boys armed with *Lathi*, *Dandde*, Swords, Iron Rods and Country made pistol after raising *Lalkara*, said:- "*Chudae Chamar Behenchodo ko aaj maza chakha denge*" those who set ablaze my motorcycle after trespassing into the house, broke the glass panes of windows and doors



broke wash basins broke all the taps of the house and broke the fridge of Jasbir and broke the glasses and washbasins and broke all the articles set ablaze the motor-cycles of one Rohtash and broke all the household articles of the house of Ramesh, broke the motorcycle as well as household articles of Ishwar, broke the motorcycle and the doors and windows of the house of Kapil, motorcycle of one Madanlal was damaged and fired at the door of one Krishan damaged at the house of one Sandeep, Two motorcycles of one Ram Kumar were completely damaged, broke the fridge of Shamsher and molested our daughters & daughter-in-law, Mamta was molested, manhandled, one Suman was also molested and abused her while leaving saying, “Today you have been saved, tomorrow we will set ablaze the whole *basti* will be turned it into ashes and we will not allow a single Balmiki to stay in the village”.

3. Learned counsel for the appellant *inter alia* contends that in the FIR(supra) only the co-accused namely Shubham @ Shubham Sangwan was named and the appellant has been involved in the present case only on the basis of disclosure statement of co-accused Rahul Bakra and no substantial role has been attributed to him. The appellant was granted the concession of regular bail by this Court vide order dated 25.05.2021 passed in CRM-M-20049-2021. Learned counsel further submits that appellant is a Truck driver by profession and he had been appearing before the trial Court on each and every date except on 06.09.2024, when the appellant could not appear before the trial Court as he was in Madhya Pradesh and as such he filed an application seeking exemption from personal appearance before the learned trial Court, however, the said application was dismissed and only on account of solitary absence and in spite of the fact that the appellant has filed the application seeking personal exemption, his bail was cancelled and learned trial Court ordered forfeiture of



his bail bonds and surety bonds and warrants of arrest were issued against him. Thereafter, the appellant, himself has surrendered before the learned trial Court on 19.09.2024 and learned trial Court has declined the application seeking regular bail of the appellant vide impugned order dated 24.09.2024.

4. Per contra, learned State counsel filed the custody certificate, which is taken on record and opposes the prayer made by learned counsel for the appellant on the ground that there are total 36 accused persons in the FIR(supra) and the trial of the case is being delayed due to non-appearance of the accused as on every date, one or the other accused would file the application seeking exemption from personal appearance. However, she could not controvert the fact that the appellant was granted regular bail by this Court vide order dated 25.05.2021 (Annexure P-2).

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that bail of the appellant was dismissed only on account of solitary absence. Out of total 60 prosecution witnesses, none has been examined so far, thus, conclusion of trial may take sufficient long time. Culpability, if any, would be determined at the time of the trial. The appellant is not involved in any other case.

6. The sole purpose of issuance of non-bailable warrants is to secure presence of the accused before the trial Court. The appellant in the present case has himself come forward and has undertaken to appear before the trial Court on each and every date.

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 demo cracy, 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 appeal is allowed and impugned order dated 24.09.2024 passed by learned Additional Sessions Judge, Karnal is set aside and the appellant-Harsh is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

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.

October 14, 2024		(HARPREET SINGH BRAR)
<i>Ajay Goswami</i>		JUDGE
(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No