

ordinary course of nature. Thus, FIR under Section 302 IPC was registered against unknown persons. On 14.02.2023, the father of the deceased namely Deep Chand S/o Sultan approached the jurisdictional police authority and identified the dead body to be of his son namely Jaibir and thereafter, he moved an application before the police against the petitioner on the allegations that his deceased son was a driver of the truck and the petitioner-Rajpal Singh was his friend and that the petitioner had borrowed a sum of Rs.6,000/- from his son, six months back and that on 24.01.2023, his son Jaibir told him that petitioner had called him and on his asking, deceased went to Loharu on his truck and on the next day, when the complainant tried to contact his son on mobile, his mobile phone was found to be switched off and then he called the petitioner, who informed that a quarrel had taken place between him and Jaibir and he had left Jaibir in Kharkhoda.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner is behind the bars since 16.02.2023 and investigating agency has completed the investigation and submitted the final report under Section 173 Cr.P.C. before the concerned jurisdictional Court and later, offence under Section 302 of IPC was deleted and Section 304 of IPC was added. The learned counsel for the petitioner referred to the post-mortem report to contend that all the nine injuries are abrasions and contusions and even the investigating agency has deleted Section 302 of IPC. The nature and extent of injuries clearly indicates that even offence under Section 304 of IPC is made out or not would be a moot point to be adjudicated by the learned trial Court. The statement of the witnesses, who were travelling along with the petitioner and deceased, would also show that the *mens rea* for passing the culpability on the petitioner is totally missing. The trial of the case is likely to take long time to

conclude.

4. Per contra, the learned State counsel, on instructions from ASI Sunil, opposes the prayer of grant of regular bail to the petitioner on the ground that serious allegations are there against the petitioner and petitioner has made a disclosure statement by confessing that he along with the deceased (complainant's son) had consumed liquor together and thereafter, a scuffle took place between them which led to the death of the deceased. Further, the mobile phone and shirt of the deceased were recovered at the instance of the petitioner.

5. 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. 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 16.02.2023. The investigating agency has already concluded the investigation and submitted the final report under Section 173 Cr.P.C. on 16.05.2023. Trial of the case has not made any progress yet as out of 23 witnesses cited by the prosecution, only one witness has been examined so far. Culpability, if any, would be determined at the time of the trial. No useful purpose would 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.

7. Keeping in view the facts and circumstances of the case, the present petition is allowed without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner-Rajpal Singh 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.

January 08, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |