

CRM-M-58204-2023

216 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-58204-2023 (O&M)

Date of Decision: 01.02.2024

BIJENDER

...Petitioner

V/S

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Dr. Rau P.S. Girwar, Advocate,
Mr. Vikram Rana, Advocate, and
Ms. Archana Arora, Advocate for the petitioner.

Ms. Geeta Sharma, DAG Haryana.

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. 225 dated 30.06.2021 registered under Sections 302, 201 of Indian Penal Code at Police Station Israna District Panipat.

2. Present FIR was lodged on the allegations that on 27.06.2021, at 9.30 AM, the complainant, who was working as a Chowkidar, came to check the Rohtak Highway Main gate of Medical College and found a person was lying at a distance of 50 meters. The complainant thought that some drunkard man is lying there but when he went there to check him, he found him to be dead. Information was given to the concerned Jurisdictional Police Authorities. Injuries were found on the chest to leg space and fingers and neck of the deceased. On the left hand of the deceased, his name was inscribed in Hindi as Pradeep and word BL was tattooed on the left side of his chest. The police initiated the proceedings under Section 174 of Cr.P.C. and got conducted the post-

mortem.

3. Learned counsel for the petitioner *inter alia* contends that the case of the prosecution is based upon circumstantial evidence and the complaint in which the petitioner was named as one of the accused was made after a delay of 5 days from the incident. Material witnesses have already been examined. The petitioner is behind the bars since 01.07.2021. The prosecution has not been able to produce its witnesses and the delay in concluding the trial violates the fundamental rights of the petitioner enshrined under Article 21 of Constitution of India, which ensures right to speedy trial.

4. Per contra, learned State counsel has filed the status report dated 31.01.2024 by way of affidavit of Krishan Kumar, HPS Deputy Superintendent of Police, CAW, Panipat, on behalf of respondent-State of Haryana and opposes the prayer of grant of regular bail to the petitioner on the ground that petitioner is involved in a heinous crime and there is sufficient material available on record to indicate his complicity in the alleged incident and the petitioner has already confessed his involvement in the alleged occurrence by making a disclosure statement. During investigation, weapon of offence i.e. *Danda*, the clothes worn by the deceased and the motorcycle make Splendor have been recovered.

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 01.07.2021. The trial of the case is likely to take long time as out of 14 prosecution witnesses, only 8 have been examined so far. So further incarceration of the petitioner without there being the

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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. The present petition seeking regular bail to the petitioner is allowed solely on the ground of long custody already undergone by him and without commenting on the merits of the case lest it may prejudice the outcome of the case pending before the trial Court.

7. In view of the above, the present petition is allowed and the petitioner- Bijender is ordered to be released on regular bail during trial on her 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.

01.02.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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