

CRM-52804-2023 in/and
CRM-M-58469-2023
Date of decision: 10.01.2024

....Petitioner

State of U.T. Chandigarh

...Respondent

Present: Mr. Manjot Gujral, Advocate
for the applicant/petitioner.

Mr. Rajiv Vij, Addl.P.P.,
for the respondent-U.T. Chandigarh.

HARPREET SINGH BRAR, J. (ORAL)

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Learned counsel for the applicant/petitioner wishes to withdraw the present application.

Dismissed as withdrawn.

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The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.115 dated 03.05.2023 under Sections 406/419/420/379/411/34 of IPC registered at Police Station Sector 36, District U.T. Chandigarh.

The present FIR was lodged on the statement made by complainant-Ravinder Kaur on the allegation that on 01.05.2023 at about 08:45 A.M. as per her routine, she was going to her office i.e. High Court on

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her Aactiva scooter and when she crossed Attawa *chowk*, two persons riding on motorcycle came from behind and asked her to stop. Both the persons asked the complainant that why she was wearing gold jewellery and both the assailants took the chain, ring and gold bangles of the complainant and they took the bag of the complainant on the pretext of putting the jewellery in the bag. When the complainant reached her office and checked her bag, there was no jewellery in the bag.

Learned counsel for the petitioner *inter alia* contends that the petitioner is not named in the FIR. The description of the bike as well as the assailants has not been given anywhere to establish the identity of the petitioner. The allegations of theft are levelled against three persons, whereas, the Investigating Agency has only made two persons as accused and the petitioner has been falsely implicated in the present case and his identification while in police custody, has no evidentiary value in the eyes of law. He further submits that the petitioner is behind the bars since 01.07.2023.

Per contra, the learned State counsel opposes the grant of regular bail to the petitioner on the ground that the petitioner's identity is duly established on the basis of CCTV Camera footage and the stolen ring of the complainant was recovered from the possession of the petitioner, as such, his role in the alleged offence is clearly established.

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

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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 records of the case, it transpires that the petitioner is behind the bars since 01.07.2023. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court on 28.08.2023. The trial of the case has not made much progress as none of the prosecution witnesses has been examined so far. The culpability, if any, would be determined at the time of trial. Perusal of the record indicates that the offence under Section 420 of IPC would be a debatable issue and all other offences under which FIR was lodged is punishable upto three years. No useful purpose shall be served by further detention of the accused/petitioner.

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Keeping in view the facts and circumstances of the case and the fact that the petitioner is not involved in any other case and the likelihood of trial being prolonged, 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-Ali Zama Zahoor Jafri is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the tune of Rs.1 lakh with the Illaqa Magistrate/Trial Court concerned.

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

10.01.2024
Neha

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