

Prince Kumar @ BabaPetitioner

State of Punjab ...Respondent

Present: Mr. Angad Chahal, Advocate and
Mr. Karan Sofat, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

The present FIR has been lodged on the allegations that since the year 2022, the complainant was working in a restaurant at Jalandhar regularly, therefore, used to put up his residence in the house of his sister, Sonika at Paragpur, Jalandhar, however, he left his job in May 2023. In May, 2023, he stated to have gone to meet his parents and sister namely, Pooja at Shiv Colony Talwara. The complainant stated to have one sister, namely, Monika who has two sons i.e. elder son, namely, Vishal (17 years) who was thrashed one month back by Sumit Kumar, Rohit Kumar Sharma and Kunal alias Nikka and Vishu (co-accused), hence on 15.05.2023, again they intercepted Vishal (nephew of

CRM-M-59864-2023

-2-

complainant) near Gurudwara Chowk and was given brick bats blows by them and at that time, Monika, sister of the complainant, also stated to be accompanying Vishal and even she received brick bat blows and medical examination of Vishal was also got conducted and matter was reported for which the accused did not appear, hence, the matter was postponed for 23.05.2023. It is further alleged that the said Kunal and Prince (present petitioner) never wished to materialized the compromise, therefore, they had been causing threats to the complainant also. On 19.05.2023, complainant again went to see his parents and sister, Pooja at Talwara. On the evening of 20.05.2023, there was a '*Jagrata*' organized in Vishavkarma Mandir, Talwara, therefore at about 08:00 P.M., the complainant/informant had come out of his house at Shiv Colony Talwara to attend '*Jagrata*' by riding scooty, at that time Vishu (co-accused), his neighbour, while riding his motorcycle came to him and asked him for attending '*Jagrata*,' together. On this, the complainant parked his scooty and boarded motorcycle driven by Vishu as pillion rider. But Vishu, instead of proceedings to the venue of '*Jagrata*' turned motorcycle towards canal and at about 08:30 P.M. as already conspired, Princi Kumar @ Baba (petitioner), Kunal alias Nikka, armed with *datars*, Rohit Kumar Sharma armed with iron Tokka, Sumit Kumar armed with baseball, Mandeep Kumar @ Mendi armed with iron *sua*, were already standing on the bank of the canal. The complainant/informant told Vishu that he had cheated him as he was not on talking terms with the other accused and when complainant tried to whisk away from the spot after alighting from the motorcycle, they all surrounded him. Prince Kumar @ Baba (petitioner) after raising *datar* carried by him in his hand, raised *lalkara* to catch hold him and be taught a lesson. Meantime, the

CRM-M-59864-2023

-3-

present petitioner gave *datar* blow on the head of the complainant with intention to kill him. Kunal with intention to kill gave two *datar* blows to complainant which hit on the left arm shoulder and head. The petitioner, Kunal, Rohit Kumar, Mandeep Kumar alias Mendi, Sumit and Vishu have conspired and armed with *datar* and Sanjiv Kumar and Vishu have inflicted injuries upon his person and thereafter, all the assailants had brought back him in a vacant plot opposite the house of Kunal and was thrown there. They again assaulted him. Accused-Mandeep Kumar @ Mendi with intention to kill, pierced iron *sua* blow in his neck, Rakesh Kumar gave *thudda* blows. When the complainant was wailing in pain, lying on the ground at that time, Kunal stepped on his chest and jumped and started screaming and raised noise to exhibit their power as complainant dared to mingle with them.

Learned counsel for the petitioner *inter alia* contends that the petitioner has clean antecedents and is not involved in any other case, moreover, the complainant has suffered eight injuries and opinion with regard to all the injuries collectively being dangerous to life is to be determined by the learned trial Court during the course of trial. It is further submitted that nature and extent of all the injuries could not be termed as dangerous to life attracting the offence under Section 307 of IPC. He further submits that the trial is progressing at snail's pace as not even a single prosecution witness has been examined so far.

Per contra, the learned State counsel opposes the grant of regular bail to the petitioner on the ground that the petitioner is the main accused and alleged to have given *datar* blow on the head of the complainant and his role is

CRM-M-59864-2023

-4-

clearly established during the investigation.

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.”

Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars for the last 08 months and 02 days as on 23.01.2024 and one of the co-accused, namely, Bishua @ Vishu was granted the concession of regular bail vide order dated 15.11.2023 passed in CRM-M-36949-2023 titled as '*Bishua @ Vishu Vs. State of Punjab*'. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court on 19.08.2023 and trial of the case has not made much progress as not even a single prosecution witness

CRM-M-59864-2023

-5-

has been examined so far. The culpability, if any, would be determined at the time of trial. No useful purpose shall 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.

In view the above, 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-Prince Kumar @ Baba 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.

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

24.01.2024
Neha

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