

Date of decision: 25.01.2024

...PETITIONER

STATE OF HARYANA

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR J. (ORAL)

This is the first petition filed under Section 439 Cr.P.C. seeking regular bail in a case bearing FIR No.498 dated 24.12.2020 registered under Sections 302, 120-B of Indian Penal Code at Police Station Punhana, Nuh.

2. As per the case of the prosecution, the complainant made a statement to the effect that his brother was married with one Kanti and there was some dispute between husband and wife, due to that his wife Kanti used to work for eunuch. On 24.12.2020, the brother of the complainant had an altercation with his wife Kanti. Thereafter, his wife Kanti along with other co-accused gave severe beatings to his brother Jagdish and he succumbed to the injuries inflicted by the petitioner and co-accused Kanti.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner is in custody since 25.12.2020. The petitioner has no role with regard to the dispute between Jagdish (since deceased) and his wife Kanti and deceased used to consume excessive alcohol and after getting drunk, he fell down and sustained head injury and died at the house of one Shehnaj, who has been given clean chit by the investigating agency. The spot of the occurrence

was not the matrimonial house and the dead body was also not recovered from the matrimonial house. Moreover, the complainant has named 14 persons as accused, out of which, 11 have been found innocent by the investigating officer. Even the complainant has already been examined. The case is based on circumstantial evidence. PW-3 Mangal, who is one of the material witness, being brother of the deceased has not supported the case of the prosecution and he has been declared hostile by the learned Public Prosecutor and the main accused namely Kanti has been granted the concession of regular bail by learned Sessions Judge, Nuh vide order dated 11.01.2024.

4. Per contra, the learned State counsel, on instructions from Investigating Officer, opposes the grant of regular bail to the petitioner by submitting that the arguments advanced by learned counsel for the petitioner with regard to the deceased suffering head injuries holds no ground. As per the MLR, the cause of death is strangulation, however, he could not controvert the fact that the petitioner is not involved in any other case and co-accused namely Kanti wife of the deceased has been granted the concession of regular bail.

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 learned counsel for the parties and after perusing the records of the case, it transpires that the co-accused namely Kanti has been granted the concession of regular bail vide order dated 11.01.2024 passed by learned Additional Sessions Judge, Nuh and as per the custody certificate, the petitioner has already undergone a custody of 03 years, 01 month and 01 day as on 25.01.2024. The trial of the case is likely to take long time which is progressing at a snail’s pace. 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 and the petitioner-Kajal @ Premchand 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 25, 2024
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(HARPREET SINGH BRAR)
JUDGE

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