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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-63480-2023

Date of decision: 21.03.2024

Bhupinder Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Khushkaran K. Goyal, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.66 dated 01.03.2021 under Sections 307/323/120-B of IPC and Sections 25/27/54-59 of Arms Act, 1959 registered at Police Station Focal Point, District Ludhiana.

The FIR (*supra*) was registered on the statement of Gurwinder Singh on the allegations that one day at about 10:50 A.M., he had gone to bring *goti* from Sunny Auto Centre which is adjoining to his shop. When he reached back to his shop, two young hindu boys came on motor cycle from the side of DCM Presidency School. The young boy sitting on the back seat of the motor cycle started firing at him from the revolver in his hands with intention to kill him. The first bullet went away by touching back side of his neck due to which lot of blood came out due to which, he became perplexed and hide himself behind a tree. The boy again fired three shots. On hearing the noise of bullet, many people of the *mohalla* gathered there and both the young persons along

with their motorcycle ran towards to Ayyappa Mandir. In the meantime, the brother of the complainant, namely, Manmohan Singh, reached the spot, who after arranging private vehicle, took him to Civil Hospital, Ludhiana, where the doctor checked him and sent him back after dressing his wound. It is further alleged that the motive behind the occurrence is that the complainant and his brother, Bhupinder Singh had a case in the Court regarding the house and his brother, Bhupinder Singh, by hatching a conspiracy with an intention to kill him sent two young hindu boys.

Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case as the civil litigation is pending between the petitioner and the complainant who are real brothers. As per the allegations, one, Gagandeep @ Gandhi was alleged to have fired upon the complainant and he has been granted the concession of regular bail by the Coordinate Bench of this Court vide order dated 12.01.2022 passed in CRM-M-50600-2021 titled as 'Gagandeep alias Gandhi Vs. State of Punjab' (Annexure P-3). Moreover, it would be a moot point to be decided by the learned trial Court whether an offence under Section 307 of IPC is made out or not as the nature and extent of injury does not satisfy the ingredient of Section 307 of IPC.

Per contra, the learned State counsel, on instructions from ASI Rakesh Kumar, opposes the grant of regular bail to the petitioner on the ground that the petitioner has wilfully concealed himself and remained absconded and ultimately, has been declared proclaimed offender. Further, the learned State counsel could not controvert the fact that the co-accused, namely, Gagandeep alias Gandhi has been granted the concession of regular bail. He further submits that the petitioner is not involved in any other case.

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 since 20.07.2023. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case has not made much progress as out of 15 prosecution witnesses none 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-Bhupinder 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.

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

21.03.2024
Neha

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