

years on 01.11.2022 a supplementary statement was made by the brother-in-law of the deceased Mukesh Kumar, which is also based on the hearsay evidence, having no value in the eyes of law. The only evidence available on record against the petitioner is the disclosure statement made by co-accused Gurdhian Singh @ Bholu, in which, he has confessed that he has given injuries to Mukesh Kumar with iron axe and due to the injuries, Mukesh Kumar had died. Even in the confessional statement made by co-accused Gurdhian Singh @ Bholu, no role has been attributed to the petitioner. Moreover, the weapon i.e. iron axe recovered at the instance of co-accused Gurdhian Singh @ Bholu, was never sent for chemical examination. No effort has been made by the investigating agency to establish and prove any identity of the assailants as no Test Identification Parade was ever conducted.

4. Per contra, the learned State counsel, on instructions from SI Karamjit Kaur, opposes the prayer of grant of regular bail to the petitioner on the ground that the petitioner is involved in heinous crime and his complicity is clearly established on the basis of disclosure statement made by the co-accused.

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 the learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 02.11.2022. The investigating agency has already concluded the investigation and submitted the final report under Section 173 Cr.P.C. on 11.01.2023. Trial of the case has not made any progress yet as out of 29 witnesses cited by the prosecution, none has been examined so far. Culpability, if any, would be determined at the time of the trial. 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, the petitioner-Hardeep Singh @ Kali 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 05, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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