

Date of decision: 21.03.2024

....Petitioner

...Respondent

Ms. Geeta Sharma, DAG, Haryana.

The present FIR was lodged on the statement of Garib Dass on the allegations that in the family of complainant, one Ramdas father of Manoj was expired and all were sitting at his home after the death of Ramdas and in the meanwhile, one, Kanshi Ram came on the *kirana* shop of complainant for getting the *bundal* of *biddi* then Shivam grandson of the complainant was sitting in the street due to death which has occurred in their family. Therefore, *biddi* cannot be sold, then due to that talk, Kanshi slapped on the face of Shivam and after some time, called 30-40 persons on spot who attacked through

bricks and stones on their houses. Knife blow was given on the stomach of Mukesh son of the complainant, brick blow was given in the head of Ravi, serious injuries were caused on the finger and thumb of Ramesh and entire belongings in the house were broken. It is further alleged that they had also snatched the gold chain from the neck of Mukesh.

Learned counsel for the petitioner *inter alia* contends that the perusal of the FIR would indicate that the complainant-Garib Dass named six persons in the FIR which was registered on 12.12.2022 and the petitioner is involved in the present case only on the basis of disclosure statement suffered by co-accused while in police custody which is hit by Section 26 of the Indian Evidence Act. It is further contended that the similarly situated co-accused, namely, Suresh and Ram Niwas were granted the concession of bail by this Court vide order dated 17.05.2023 passed in CRM-M-22135-2023 titled as 'Suresh Vs. State of Haryana' and vide order dated 29.11.2023 passed in CRM-M-59035-2023 titled as 'Ram Niwas Vs. State of Haryana', respectively and the fatal injury is attributed to co-accused, namely, Sandeep @ Bachi. Moreover, the cause of death given in the death summary is a respiratory failure and it would be a moot point to be determined by the trial Court whether offence under Section 302 of IPC is made out or not.

Per contra the learned State counsel, on instructions from ASI Dalbir Singh, opposes the grant of regular bail to the petitioner on the ground that he was a member of unlawful assembly. As such, he does not deserve the concession of regular bail.

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 perusing the records of the case, it transpires that the petitioner is behind the bars since 16.12.2022. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court on 10.03.2023. Trial of the case has not made much progress as none out of 36 prosecution witnesses has been examined so far.

Keeping in view the facts and circumstances of the case and especially, the fact that the similarly situated co-accused-Suresh and Ram Niwas were granted the concession of bail by this Court vide order dated 17.05.2023 passed in CRM-M-22135-2023 titled as ‘Suresh Vs. State of Haryana’ and vide order dated 29.11.2023 passed in CRM-M-59035-2023 titled

as ‘Ram Niwas Vs. State of Haryana’, respectively, and the likelihood of trial being prolonged, the present petition is allowed. 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.

Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner-Mayank 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