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

CRM-M-16520-2025

Date of decision: 01.04.2025

Sukhdev Singh alias Kaka

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Charanpreet Singh, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 439 of Cr.P.C./483 of Bharatiya Nagarik Suraksha Sanhita, 2023 in case bearing FIR No.29 dated 26.02.2024 under Sections 302/324/341/34 of IPC registered at Police Station B-Division District Amritsar.

The FIR (*supra*) was registered on the statement of the complainant, namely, Gurdial Singh son of Labh Singh and the same reads as under:-

“Statement of Gurdial Singh son of Labh Singh, resident of house no. 226, street no. 5, New Shaheed Udham Singh Nagar, Sultanwind Road, Amritsar, aged 60 years, mobile no. 8054406116 made a statement that I am resident of above said address and I do job of private driver. I have four children, out of whom the eldest son is Harjinder Singh alias Sunny aged around 30 years who is married and younger to him is daughter Seema Kaur who is married and younger to her is daughter Reena Kaur and the youngest is son Bobby Singh who is studying. My son Harjinder Singh alias Sunny do the work of jeweller. In our neighbourhood Mehtab Singh alias Rajan son of Vikramjit Singh lives who do the work of snatching and is a criminal person. In order to meet him miscreants used to visit the street very often. Few days back i have told Mehtab Singh alias Rajan that because of him wrong persons come in the street and they asked your address from us, Mehtab Singh alias Rajan above said did not like this thing due to which I have installed CCTV Camera outside my house, so that i can come to know about the wrong persons who use to come to meet Mehtab Singh alias Rajan. Mehtab Singh nursed grudge due to installation of CCTV Cameras and started threatening us that I have levelled

false allegation against him. On 25.02.2024 at around 8.00 in the night. I and my son were standing in the street after coming outside of our house, then Mehtab Singh alias Rajan armed with Dattar and his brother Sukhdev Singh alias Kaka and his mother Sunita Rani came to the street from their house and immediately on coming on seeing us Mehtab Singh alias Rajan raised Lalkara and told today they will teach lesson to Harjinder Singh alias Sunny for levelling false allegations against us and while saying this gave a Dattar blow on my son Harjinder Singh alias Sunny. In order to save my son I came in front then the blow given by Mehtab Singh alias Rajan hit on my right arm and we raised Raula Mar Ditta Mar Ditta then all of them ran away from the spot, I in injured condition with my son Harjinder Singh alias Sunny went to Police Station B division and Got a docait of the injuries suffered me and had gone to Civil Hospital Amritsar for treatment. Doctor was doing medical then due to the more pain Doctor told to bring medicine, i and my son Harjinder Singh alias Sunny came outside hospital to medical store to get the medicine when we reached at the gate of the hospital then at around 9.00 in the night suddenly Mehtab Singh alias Rajan came at the gate along with his brother Sukhdev Singh alias Kaka they stopped myself and my son and while raising Lalkara they told today they will finish Harjinder Singh alias Sunny he falsely levelled false allegations against us every day. While i was watching Mehtab Singh alias Rajan and Sukhdev Singh alias Kaka started fighting with my son Harjinder Singh alias Sunny and Mehtab Singh alias Rajan taken out Kirch like weapon and gave a blow in the stomach of my son Harjinder Singh alias Sunny which hit on the upper side of left rib area, my son fell down on the ground. I raised Raula Mar Ditta Mar Ditta then Mehtab Singh Rajan and his brother Sukhdev Singh Kaka along with their weapon ran away from the spot. I with the help of other persons taken Harjinder Singh alias Sunny inside Civil Hospital Emergency in injured condition where doctor declared my son Harjinder Singh Sunny dead. The motive behind the occurrence is that Mehtab Singh alias Rajan who is criminal person in order to meet him wrong persons use to visit the street, we use to raise objection and stopped him from doing all this. Due to this Mehtab Singh alias Rajan, Sukhdev Singh Kaka have murdered my son, I am victim against them strict legal action may be taken. Verified (hindi) Gurdial Singh.”

Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case and as per the case set up by the prosecution, the petitioner is shown to be present at the spot, however, empty handed. Further, no injury or overt act has been attributed to the petitioner and the petitioner has been implicated in the present case with the aid of Section 34 of IPC and it would be a moot point to be determined by the learned trial Court whether the petitioner can be held liable for an offence under Section 302 of IPC with the aid of Section 34 of IPC. He further submits that

similarly situated co-accused, namely, Sunita Rani, has been granted the concession of regular bail by this Court vide order dated 16.07.2024 passed in CRM-M-32543-2024 titled as 'Sunita Rani and State of Punjab' (Annexure P-2). Further, out of 26, not even a single prosecution witness has been examined so far and the petitioner is behind the bars since 28.02.2024.

The learned State counsel has filed custody certificate in the Court today which is taken on record and per contra, opposes the grant of regular bail to the petitioner on the ground that the petitioner is the brother of the main accused and he was present at the spot on both the incidents reflected in the FIR (*supra*) and the petitioner cannot escape liability. However, he could not dispute the fact that the fatal injury has been specifically attributed to co-accused, Mehtab Singh, and 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

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28.02.2024. 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 26 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-Sukhdev Singh alias Kaka 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

01.04.2025*Neha*

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