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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M No.22611 of 2024
Date of decision: 27.01.2025

Kuldeep @ Billu

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sahil Choudhary, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR J. (Oral)

1. Prayer in this 2nd petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in FIR No.179 dated 03.05.2011 registered under Sections 302, 392, 34 IPC at Police Station Sadar Panipat, District Panipat.

2. The brief facts of the case are that on 03.05.2011, the complainant, Sukhdev, reported that his brother Dalbir, a salesman at a wine shop on Kabri Road, Panipat, did not return home after his shift, and his mobile phone was unreachable. Sukhdev and another person, Jagbir, searched for Dalbir and found him dead on the road near village Nibri. Dalbir had injuries on his eye and mouth, and his helmet was found broken nearby. Thereafter, the FIR (supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the FIR (supra) and he was granted the concession of regular bail by this Court on 28.10.2020 passed in CRM-M No.32699 of 2020, titled as “Kuldeep @ Billu vs

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State of Haryana”, however, his bail was cancelled on 05.01.2023, as the petitioner could not appear before the learned trial Court on 22.11.2022 due to some misunderstanding regarding the actual date fixed and he subsequently himself surrendered on 06.02.2023 and almost more than 02 years have elapsed. He submits that the petitioner has approached the learned trial Court seeking regular bail, which was declined on the ground that only 02 witnesses remained to be examined, however, the prosecution has moved an application under Section 311 Cr.P.C., seeking examination of 03 more witnesses.

4. Learned counsel for the petitioner further submits that the material witnesses have already been examined as such, there is no apprehension with regard to the petitioner influencing the witnesses and further the entire case set up by the prosecution is based upon circumstantial evidence and there is no direct evidence credible enough to remotely suggest that the petitioner is complicit in the alleged incident and he is not involved in any other case.

5. Learned counsel for the petitioner further submits that the alleged incident has taken place in the year 2011 and initially an untraced report was submitted on 12.11.2011, however, after a lapse of 07 years, the case was reopened on the basis of extra judicial confession made by PW-5 – Dula Ram. Lastly, he submits that as on today, the petitioner has undergone more than 04 years and 02 months of actual custody and the prosecution has not been able to conclude its case inspite of passing of 04 years.

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6. *Per contra*, learned State counsel has filed Custody Certificate today in the Court which is taken on record and he opposes the prayer made by learned counsel for the petitioner on the ground that the bail of the petitioner was rightly cancelled by the learned trial Court as the petitioner failed to appear on the date fixed, however, he could not controvert the fact that the petitioner is not involved in any other case and the petitioner is behind the bars for the last 04 years, 02 months and 22 days and the petitioner has been granted the concession of regular bail by this Court on merits on 28.10.2020.

7. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars from the last 04 years, 02 months and 22 days. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court. Charges were framed and trial of the case has not made much progress.

8. A two Judge Bench of Hon'ble Supreme Court in ***"Satender Kumar Antil vs. 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

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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.”

9. Further the culpability, if any, would be determined at the time of trial and as such, no useful purpose will be served by further detention of the petitioner-accused. 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.

10. In view the discussion above, the present petition is allowed. Accordingly, without commenting upon the merits of the case, the petitioner namely Kuldeep @ Billu is ordered to be released on regular bail during pendency of the trial, on furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court/Duty Magistrate.

11. Nothing observed hereinabove shall be construed to be expression of an opinion by this Court on merits of the case. The learned Court below is directed to proceed with the matter on its own merits, lest it may prejudice the trial.

(HARPREET SINGH BRAR)
JUDGE

27.01.2025

yakub

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No