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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
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Date of decision: 20.02.2025

1. CRM-M-23363-2024

Markas @ Massa @ Markas Masih
.....Petitioner
Versus
State of Punjab
.....Respondent

2. CRM-M-49252-2024

Shubam Bhatti @ Sameer Bhatti
.....Petitioner
Versus
State of Punjab
.....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. L.S. Sidhu, Advocate
for the petitioner in CRM-M-23363-2024.

Mr. Abhaysher Singh, Advocate
for the petitioner in CRM-M-49252-2024.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR J. (Oral)

1. Vide this common order, I intend to dispose of CRM-M Nos.23363 and 49252 of 2024, as common questions of law and facts are involved for adjudication. For the sake of convenience, facts are taken from CRM-M-23363-2024.
2. Prayer in both these petitions filed under Section 483 of BNSS, 2023/439 Cr.P.C., is for grant of regular bail to the petitioner(s) namely Markas @ Massa @ Markas Masih and Shubam Bhatti @

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Sameer Bhatti in FIR No.0088 dated 08.08.2020 registered under Sections 307, 324, 323, 341, 506, 148, 149, 188, 269 IPC (charges framed under Sections 307, 341, 324, 323, 188, 269, 34 IPC) at Police Station Zira, District Ferozepur.

3. Learned counsel appearing for the petitioner – Shubam Bhatti @ Sameer Bhatti, submits that this is the 1st petition filed by the petitioner seeking regular bail, whereas, learned counsel appearing for the petitioner – Markas @ Massa @ Markas Masih submits that this is the 3rd petition seeking regular bail to the petitioner. The 2nd petition was dismissed as withdrawn on 26.02.2024 and now this 3rd petition has been filed on account of long incarceration of the petitioner for more than 03 years and the prosecution has not even examined a single prosecution witness till date.

4. The brief facts of the case are that FIR was registered on the complaint of one Harpreet Singh who stated that on 07.08.2020, he alongwith his friend Saurav Sharma was going to his house. They were on a motorcycle and when they reached near Nehar Wali Basti, then at about 10/11 pm, he saw Markas Masih @ Massa (petitioner), Sewa Singh, Phoola Singh, Shubam Bhatti (petitioner) and 3-4 unknown persons were standing on the road. They forcibly stopped the motorcycle of complainant. Markas Masih @ Massa raised a lalkara that complainant be taught a lesson for quarreling with them. Markas Masih @ Massa inflicted 2 kappa blows which hit on the left and right side of head of complainant. Sewa Singh gave a kapa blow on the back side of

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head of complainant. Shubham Bhatti inflicted baseball blow which hit on the left hand finger of complainant. Phoola Singh inflicted baseball blows which hit on left leg and left foot of complainant. Thereafter, the complainant fell on the road. His friend Saurav Sharma tried to save him. The accused inflicted injuries on Saurav Sharma as well. On noises being raised, all accused ran away from spot. Thereafter, the impugned FIR was registered.

5. Learned counsel appearing for the petitioner – Markas @ Massa @ Markas Masih submits that as per the MLR of the complainant, he has suffered 06 injuries whereas the injured Saurav Sharma, has sustained 03 injuries and the co-accused of the petitioner(s) namely Sewa Singh, who is alleged to have given the kappa blow on the backside of the complainant, has been granted the concession of regular bail on 08.09.2021 passed in CRM-M No.36974 of 2020 and the allegations against the petitioner – Markas @ Massa @ Markas Masih are similar in nature and he is also alleged to have given kappa blows on the backside of the head of the complainant Harpreet Singh and there is no opinion of the doctor for declaring these injuries dangerous to life, however, they have been declared grievous in nature.

6. Learned counsel appearing for the petitioner – Shubam Bhatti submits that the similarly situated co-accused namely Sonu Bhatti @ Phoola Singh, who is alleged to have given baseball bat blow on the left leg and left foot of the complainant, has been granted the

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concession of regular bail by the learned Additional Sessions Judge, Ferozepur on 24.03.2023 and the petitioner – Shubam Bhatti, is alleged to have given simple injuries on the person of the complainant with the baseball bat and his role is identical to co-accused Sonu Bhatti @ Phoola Singh, who has been granted the concession of regular bail by the learned Additional Sessions Judge, Ferozepur and the investigation stands completed and till date, not even a single witness of the prosecution has been examined.

7. *Per contra*, learned State counsel has filed custody certificate of Shubam Bhatti today in the Court, which is taken on record and opposes the prayer of the petitioner(s) on the ground that the petitioner – Markas @ Massa @ Markas Masih is involved in 04 more cases and he is a habitual offender whereas the petitioner – Shubam Bhatti is involved in 02 more cases and specific allegations have been levelled against both the petitioner(s) with regard to inflicting injuries upon the complainant, however, he could not controvert the fact that the petitioner – Markas @ Massa @ Markas Masih and the petitioner – Shubam Bhatti are behind the bars since 21.01.2022 and 20.05.2024, respectively and out of 27 prosecution witnesses, none has been examined so far.

8. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner – Markas @ Massa @ Markas Masih and the petitioner – Shubam Bhatti @

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Sameer Bhatti are behind the bars since 21.01.2022 and 20.05.2024, respectively. 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. Out of 27 prosecution witnesses, none has been examined so far.

9. 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 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."

10. 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(s)-accused. Keeping the petitioner(s) in further detention without the prospect of the trial being concluded in the near future, would be violative of their rights under Article 21 of the Constitution of India.

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11. Further keeping in view the law laid down by the Hon’ble Supreme Court of India in “*Prabhakar Tewari vs. State of U.P. and another*” 2020 (1) R.C.R. (Criminal 831) and “*Maulana Mohd. Amir Rashadi vs. State of U.P. and another*”, 2012 (2) SCC 382, the involvement of the petitioner(s) in other cases would not be a ground to refuse grant of concession of regular bail.
12. In view the discussion above, the present petitions are allowed. Accordingly, without commenting upon the merits of the case, the petitioner(s) namely Markas @ Massa @ Markas Masih and Shubam Bhatti @ Sameer Bhatti are ordered to be released on regular bail during pendency of the trial, on their furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/trial Court/Duty Magistrate.
13. 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.
14. A photocopy of this order be placed on the file of other connected case.

(HARPREET SINGH BRAR)
JUDGE

20.02.2025

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No