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

CRM-M-44189-2024 (O&M)

Date of Decision: 15.01.2025

MANDEEP SINGH

...Petitioner

V/S

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Harlove Singh Rajput, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG Punjab

HARPREET SINGH BRAR J. (Oral)

1. This is the first petition filed under Section 483 of BNSS 2023 seeking grant of regular bail to the petitioner in case bearing FIR No. 37 dated 28.01.2023 registered under Sections 307, 387 of Indian Penal Code and Sections 25 and 27 of Arms Act at Police Station Dera Bassi, District SAS Nagar, Mohali (Annexure P-1).

2. Present case was registered on statement of the complainant Yogesh Kumar alias Yashu to the effect that he is a truck driver. On 27.01.2023, at about 10:30 P.M., he along with his friend Sandeep Singh, Jaspal Singh and Sukhi were present on his friend Jaspal Singh's truck bearing number PB- 65-BA-3775 which was being driven by Jaspal Singh and were standing little ahead of Surya Mehal Palace, Ramgarh Road, in front of the Rajendra Infrastructure. While they were sitting and talking to each other in the truck, a person opened the driver's door of their truck, who had muffled his face, and he asked for the key of his friend Sukhi's

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motorcycle bearing number PB-65-AG-4782, which was standing next to the truck, but they refused to handover the key of the motorcycle to him. Thereafter, the said person suddenly took out his pistol and pointed it at them. So, they got down from the conductor's side for their safety and then the said person pointed the pistol towards them and asked them for the key of the motorcycle and warned that if they will not do so, they would be killed. In the meanwhile, the said person fired at them with the intention to kill them but they immediately sat down and fire of the pistol passed over his friend Sandeep. They started running away from the spot, but the said person fired directly at him with the intention to kill him and the said shot landed on his right flank and when he raised hue and cry, the said person tried to run away but in the meanwhile his friends Jaspal, Sandeep and Sukhi chased him and Jaspal took out one danda from the truck and inflicted blows on his head and other body parts of the assailant and they all raised alarm. Some passer by informed the police about this incident and police came at the spot. It has been alleged that the person who fired the gun shots towards them became unconscious due to the danda blow. Police recovered the pistol from the hand of accused and on checking his bag, some cartridges and magazines were recovered.

3. Learned counsel for the petitioner *inter alia* contends that there is complete contradiction between the weapon mentioned in the FIR and the weapon recovered from the possession of the petitioner. Further, learned counsel relies upon the ballistic report Annexure P-5 and submits that the ballistic report is negative with regard to firing of the bullet from the petitioner's gun. Learned counsel further submits that the case set up by the

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prosecution is too far fetched and implausible and perusal of the same would reveal that one of the witness i.e. Jaspal took out the stick and inflicted a blow on the head of the petitioner and due to which the petitioner became unconscious. It is highly unbelievable that the petitioner was armed with a deadly weapon and somebody would knock him down with a stick. Learned counsel further submits that the material witnesses have already been examined and as such the likelihood of influencing the complainant and other material witnesses does not arise and the petitioner is behind the bars since last two years and prosecution has not been able to conclude its evidence even after passing of two years and the delay in conclusion of trial alone would make the petitioner entitled for grant of regular bail. Learned counsel lastly submits that on the last five dates of hearing, not even a single prosecution witness has come forward to depose before the trial Court and delay in conclusion of trial cannot be attributable to the petitioner as he is confined in judicial custody.

4. Per contra, learned State counsel filed the custody certificate, which is taken on record and opposes the prayer made by learned counsel for the petitioner on the ground that there are serious and specific allegations levelled against the petitioner and the complainant suffered gunshot injury while the petitioner was trying to snatch away his motorcycle and he was arrested at the spot. As such, his complicity in the alleged incident is duly established and he is also involved in two more cases. However, he could not controvert the fact that out of 15 prosecution witnesses, till date only 04 have been examined and the complainant has already been examined.



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5. Having heard the learned counsel for the parties and after perusing the custody certificate, it transpires that petitioner is behind the bars since 28.01.2023 and trial of the case has not even reached the halfway mark as out of total 15 prosecution witnesses, only 04 have been examined till date. Culpability, if any, would be determined at the time of the trial.

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. In view of the ratio of law laid down by Hon'ble Supreme Court in **Prabhakar Tiwari Vs. State of UP and Anr.** 2020(1) RCR (Criminal) 831 and **Maulana Mohd. Amir Rashadi Vs. State of U.P. and Others** 2012(2) SCC 382, the involvement of accused in other criminal cases cannot be the sole ground to deny him the concession of bail.

7. In view of the above, the present petition is allowed and the petitioner-Mandeep Singh is ordered to be released on regular bail, subject

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to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

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.

15.01.2025
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No