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District Palwal, Haryana (challan presented under Sections 34/323/325/302/427/506 of IPC). Earlier petition(s) were dismissed as withdrawn vide order dated 25.07.2024 passed by this Court with liberty.

The FIR (*supra*) was registered on the statement of the complainant by alleging that on 03.04.2023 at around 09:30 to 10:00 P.M., the accused/petitioners along with other co-accused persons gathered and attacked his family under a conspiracy and even on the night of 29.03.2023, his house was attacked by the accused persons, resultantly, his family members got injured. The complainant had already registered the FIR of that incident and in order to teach them a lesson, they again attacked at the house of the complainant. It is further alleged that the accused persons and the complainant are residing in the neighbourhood. Accused persons, namely, Birender and Narender had told some people in the village that since they are working in Haryana police, they will teach lesson to the complainant and his family members. Due to this attack, one Sundar has been referred to Delhi as he suffered severe injuries. Kamla was lying inside the house along with her children. When she heard noises, she came to the door and at the same time, Mansingh, Omvir were breaking the door and held Kamla and gave her a stick blow in the head due to which she fell down. Thereafter, they kicked in her chest due to which she became unconscious. Naveen took a stick in his hand and hit Surender (husband of Kamla) on the back of his head and face due to which, his two teeth were broken. One Bala, was watching TV with her family and when heard the noise, she came out in the street and the accused persons attacked her and her husband with sticks in their hands. When the complainant came back home, he saw fighting took place around his house. One Kalyan



and Dharma suddenly attacked him on his hands. It is further alleged that the complainant has seen the injuries suffered by Sundar. Birender hit Surrender on the head with a rod due to which he fell down and thus, the instant case.

Learned counsel for the petitioner in CRM-M-43964-2024 *inter alia* contends that initially, 13 persons were named in the FIR (*supra*) and the Investigating Agency has declared 09 of the accused, named in the FIR (*supra*), as innocent. Only 04 persons namely, Rajender (the petitioner in CRM-M-43964-2024), Ravinder @ Bhagat Ji (the petitioner in CRM-M-47920-2024), Netarpal and Ombir have been declared guilty. Further, the alleged incident had taken place on 03.04.2023 and the FIR (*supra*) was registered after making material improvements and after unexplained delay of three days. He further refers to the case set up by the prosecution and submits that the fatal blow on the head of the deceased, namely, Sundar, has been specifically attributed to co-accused-Birender. The Investigating Agency has declared the aforementioned person as innocent during investigation. Further, the deceased died on 25.04.2023 after 22 days of the occurrence and he was 68 years of age. Admittedly, he was firstly admitted in Safdarjang Hospital, New Delhi and thereafter, Guru Nanak Hospital, Palwal and he left the hospital against the medical advice, thereafter, re-admitted to the Safdarjang Hospital, New Delhi, where he died due to septicemia and it would be a moot point to be determined by the learned trial Court whether the petitioner can be held liable for the offence under Section 302 of the IPC in view of the cause of death. He further submits that the complainant has been examined as PW-1 wherein he has reiterated the version of the FIR and has specifically named co-accused, Birender, who has caused the fatal blow on the head of deceased-Sundar.



Certified copy of the deposition of the complainant as PW-1 is produced in Court and by referring to the same, he submits that the petitioner along with Ombir alleged to have given injuries to Kamla and all the injuries suffered by Kamla are simple in nature. Further, the aforementioned Ombir has been granted the concession of regular bail by the learned Additional Sessions Judge, Palwal, on 18.07.2024 and the case of the petitioner is at par with Ombir. The petitioner is behind the bars since 26.04.2023.

Learned counsel for the petitioner in CRM-M-47920-2024 *inter alia* contends that the case of the petitioner is at par with the co-accused who have been granted the concession of regular bail by the learned Additional Sessions Judge, Palwal, apart from the self-incriminating disclosure statement, there is no other evidence against the petitioner and no specific injury has been attributed to him. The petitioner is behind the bars since 29.06.2023.

The learned State counsel has filed custody certificates in the Court today which are taken on record and per contra, on instructions from ASI Pradeep Kumar, opposes the grant of regular bail to the petitioner(s) on the ground that the petitioner(s) have played an active role in the alleged incident and they have been specifically named in the FIR (*supra*) and their complicity is duly established during the investigation. However, he could not controvert the fact that the similarly situated co-accused, namely, Ombir and Netarpal have been granted the concession of regular bail by the learned Additional Sessions Judge, Palwal. He further submits that petitioner-Rajender has suffered incarceration for more than 01 year and 10 months and petitioner-Ravinder @ Bhagat Ji has suffered incarceration for more than 01 year and 08 months and they are involved in one more case and as such, are not entitled to any relief.



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 petitioner-Rajender is behind the bars since 26.04.2023 and petitioner-Ravinder @ Bhagat Ji is behind the bars since 29.06.2023. 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. 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(s). Keeping the petitioner(s) in further detention without the



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prospect of the trial being concluded in the near future, would be violative of their rights under Article 21 of the Constitution of India.

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.

In view the above, the present petition(s) are allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, petitioner-Rajender and petitioner-Ravinder @ Bhagat Ji, are ordered to be released on regular bail during trial on their 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.

A photo copy of this order be placed on the file of connected case.

(HARPREET SINGH BRAR)
JUDGE

18.03.2025

Neha

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