



commencement, bail is granted – Court orders release on bail without commenting on merits to avoid trial prejudice. [Para 7]

Referred Cases:

Satender Kumar Antil v. CBI (2022) 10 SCC 51

Representing Advocates:

Mr. Vinod K. Kaushal for the petitioner

Mr. Sandeep Kumar, DAG, Punjab for the respondent

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**HARPREET SINGH BRAR J. (ORAL)**

This is the first petition filed under Section 439 of Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.55 dated 07.07.2023 registered under Sections 308/323/324/325/504/506/34 of Indian Penal Code at Police Station Sadar Phagwara, District Kapurthala.

2. Brief facts of the case are that on 05.07.2023, the complainant along with his cousin-Gurpreet Singh, went to a dairy shop and when they reached near the Haveli of Ram Lubhaiya (petitioner herein), they were stopped by petitioner, his wife-Tripta Devi and their sons, namely, Manish Dadra and Gaurav Dadra, who started hurling abuses and threatened them, due to which, they ran away and left the spot. Thereafter, the complainant was again restrained by the aforesaid persons outside their house, however, his cousin Gurpreet Singh fled away from the spot and Manish Dadra & Gaurav Dadra gave fist blows to the complainant. Petitioner and his wife-Tripta Devi brought *kirpan* and baseball bat from their house, respectively and with an intention to kill, petitioner gave *kirpan* blow on the head of the complainant, resultantly, the complainant fell down on the ground. In the meantime, mother of the complainant, namely, Baljit Kaur reached at the spot and when she tried to rescue the complainant, wife of the petitioner gave baseball bat blow at the left leg of Baljit Kaur. Then petitioner after giving filthy abuse, took baseball bat from his wife-Tripa Devi and gave another blow on the left leg of Baljit

Kaur. Thereafter, Manish Dadra, despite knowing the impact, gave a brick-bat blow at the head of Baljit Kaur and she became unconscious. The said Gaurav Dadra also gave brick-bat blow on the left hand fingers of the complainant. Afterwards, when people gathered at the spot, all the assailants ran away from the spot with their respective weapons while threatening the complainant party. Complainant and his mother-Baljit Kaur were moved to the Civil Hospital, Phagwara by one Manpreet Singh. Due to serious condition of the mother of the complainant, she was referred to some other hospital and as per her medical report, she had a fracture in her left leg and head. The injury No.1 on the person of complainant was also declared sharp and, thus, the present FIR was got registered.

3. Learned counsel for the petitioner *inter alia* contends that it is a case of version and cross-version and the injured has been discharged in a satisfactory condition. The cross-version was recorded on the statement of the petitioner vide DDR No.019 dated 10.07.2023. The injury attracting offence under Section 308 IPC is attributed to the son of the petitioner. The petitioner is behind the bars since 07.07.2023 and the trial of the case is likely to take long time.

4. Per contra, the learned State counsel, on instructions from ASI Binder Kumar, opposes the prayer of grant of regular bail to the petitioner on the ground that he has actively participated in the alleged incident and his participation is fully established and the petitioner has been specifically attributed an injury with the baseball on the left leg of the complainant.

5. 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. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 07.07.2023 and the investigating agency has already concluded the investigation and submitted the final report under Section 173 Cr.P.C. on 05.09.2023. Trial of the case has not commenced yet as none of the prosecution witnesses has been examined so far. Culpability, if any, would be determined at the time of the trial. No useful purpose would be served by further detention of the accused-petitioner.

7. 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-Ram Lubhaya 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.

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.

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