

HIGH COURT OF PUNJAB & HARYANA

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Date of Decision: February 16, 2024

CrI. Misc. No. M-7221 of 2024

Lakhan Pal @ Lakhan Dhabi ...Petitioner

VERSUS

State of Haryana ...Respondent

Legislation:

Sections 341, 323, 324, 307, and 34 of the Indian Penal Code

Section 439 of the Cr.P.C.

Subject: Petition for the grant of regular bail in a case involving alleged assault and attempt to murder, with the petitioner accused of participating in the assault.

Headnotes:

FIR and Allegations – FIR lodged based on complaint of assault and attempt to murder – Petitioner accused of participating in an attack involving a knife and glass bottles – Allegations of the petitioner having a grudge against the complainant from a previous incident [Para 2].

Bail Application Contentions – Petitioner contends absence from CCTV footage at the crime scene and non-involvement in causing injuries – Co-accused Sandeep granted bail earlier, highlighting petitioner's similar situation [Para 3].

State's Opposition and Petitioner's Criminal Background – State opposes bail citing petitioner's active participation and history as a habitual offender involved in nine other cases, although on bail in all [Para 4].

Bail Granted – Consideration of petitioner's time in custody, completion of investigation, and delay in trial commencement – Bail granted respecting the right under Article 21 of the Constitution of India – Trial Court to proceed without prejudice from this Court's observations [Paras 5, 7].

Reference to Supreme Court Observation – Citing 'Satender Kumar Antil v. CBI' (2022) 10 SCC 51 regarding the condition of undertrial prisoners in India, emphasizing minimal use of arrest and incarceration [Para 6].

Referred Cases:

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

Representing Advocates:

Mr. Anil Kumar Malik for the petitioner

Mr. Vikas Bhardwaj, AAG Haryana for the respondent

Harpreet Singh Brar, J . (Oral)

1. This is the first petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 425 dated 07.08.2023 registered under Sections 341, 323, 324, 307 and 34 of Indian Penal Code at Police Station City Fatehabad, District Fatehabad.
2. The present FIR was lodged on the complaint made by Bablu son of Ram Kishan on the allegations that he is doing scrap work (junk-dealer) in village Sisay, Hansi. On 07.08.2023, he and his younger brother Sunny, Suresh @ Keshu son of Dharampal and Vikram @ Vicky son of Mahabir, residents of village Jandwala Sottar, Fatehabad had come to Fatehabad

Court for appearance in a case. In the year 2019, Lakhanpal son of Desh Raj Bawaria, resident of village Ayalki came to his house and quarreled with him, upon which they caused injuries to said Lakhanpal and in this regard a case was registered against him in Police Station Sadar, Fatehabad, due to said reason, Lakhan Pal and his friend Sonu son of Sher Singh and Rinku, residents of village Ayalki were having grudge against him. Complainant further alleged that due to said grudge, on 07.08.2023, at about 2.45 P.M., when all of them were going to chamber of Advocate and reached in the gallery, near Chamber No. 158, then Lakhan Pal and his friends Sonu and Rinku stopped their way. Sonu gave stab (knife) blow on his chest, with intention to kill him; Lakhanpal threw cold glass bottle towards head of his brother Sunny, which hit wall and broke; and Rinku also threw cold glass bottle towards the complainant. Complainant further alleged that Lakhan Pal and his friends Sonu and Rinku caused injuries to them with knife, after blocking their way, without any reason and requested to take legal action against the assailants.

3. Learned counsel for the petitioner *inter alia* contends that the injuries caused by sharp edged weapon have been specifically attributed to the co-accused Sonu son of Sher Singh. However, in the CCTV footage, the petitioner is not seen present at the spot and he is alleged to have not caused any injury to the complainant. The co-accused namely Sandeep has been granted the concession of regular bail by this Court vide order dated 05.02.2024 passed in CRM-M-4886-2024.

4. Per contra, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that the petitioner was duly named in the FIR and he has taken active participation in the alleged occurrence. Moreover, he is habitual offender and is involved in nine other cases as per the custody certificate. However, learned State counsel could not controvert

the fact that the petitioner is on bail in all those cases and similarly situated coaccused – Sandeep has been granted the concession of regular bail.

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35. 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 16.08.2023. Investigating Agency has concluded the investigation and submitted the final report under Section 173 of Cr.P.C. on 03.11.2023. The trial of the case has not commenced as not even a single prosecution witness has been examined so far. So further incarceration of the petitioner without there being the prospect of the conclusion of the trial in the near future, would be violative of Article 21 of the Constitution of India. Culpability, if any, would be determined at the time of the trial.

6. 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."

7. In view of the above, the present petition is allowed and the petitioner- Lakhan Pal @ Lakhan Dhahi 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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