

thereafter, they threw chilli powder from an envelope towards their faces, due to which chilli powder entered into their eyes. Thereafter, Sukhjinder Singh raised *lalkara* that instead of daily dispute with regard to land with them, they will finish them and started giving beatings to them. They have given iron rod blow on the left side of the chest of the complainant and caused injuries on his hands, shoulders, stomach, right thigh and right leg. Thereafter, Tejinder Singh along with Sukhjinder Singh have also caused injuries to Sikander Singh-deceased and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case and as per the case set up by the prosecution, there was a dispute between the deceased and the main accused, namely, Sukhjinder Singh @ Bhola. It is further alleged in the prosecution case that the main accused accompanied by some unknown persons firstly, threw chilli powder on the face of the deceased and thereafter, inflicted injuries on the deceased, namely, Sikander Singh as well as the complainant, namely, Ashwani Kumar. It is an admitted case of the prosecution that the assailants were armed with iron rod and sticks. Thereafter, material improvements were made and even the factual ingredients to invoke the provisions under Section 302 of IPC are not there as the deceased has also recorded his statement and thereafter, he succumbed to his injuries. It is further submitted that the deceased had received six injuries and all were caused with blunt weapon and it would be a moot point to be determined by the learned trial Court whether the petitioner can be held liable for an offence under Section 302 of IPC or not. Further, there is nothing on record to establish the identity of the petitioner as being one of the assailants. No test identification parade has

been conducted. The petitioner is 21 years of age and is having clean antecedents and has undergone actual custody of more than 01 year 01 month and 10 days.

The learned State counsel has filed custody certificate along with status report dated 05.02.2025 on behalf of the respondent-State in the Court today which are taken on record and per contra, submits that during the investigation, the complicity of the petitioner was found and on the asking of the main accused-Sukhjinder Singh @ Bhola, his brother, namely, Karamvir Singh @ Chitta, has paid Rs.2,50,000/- to other accuseds for committing the crime and the petitioner is one of those persons arraigned by co-accused, Karamvir Singh @ Chitta. He further could not controvert the fact that the petitioner is not involved in any other case and the petitioner has been in custody for the last more than 01 year and not even a single witness has been examined till date.

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 the petitioner is behind the bars since 26.12.2023. 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 as out of 36 prosecution witnesses, none has been examined so far. 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. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

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-Saleem 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.

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.

(HARPREET SINGH BRAR)
JUDGE

06.02.2025

Neha

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