





CRM-M-4342-2025

-2-

iron, they decided to retrieve it as well, however, while attempting to do so, someone noticed them and shouted at them to stop, on account of which, they hid in nearby bushes. After about an hour and a half, they returned to collect the heavy iron piece, where some individuals confronted them. They abandoned the iron material and attempted to escape with their cart but were caught by two young men. These individuals began beating them with sticks, given severe injuries, tied them up with the ropes and confined them in a makeshift shelter in one corner of the plot. By morning, when the complainant regained consciousness, he found that Rafigul was still unresponsive and upon closer observation, he came to know that Rafigul was died and thus, the instant case.

Learned counsel for the petitioner *inter alia* contends that the petitioner is behind the bars since 30.03.2023 and the entire case of the prosecution is based upon hearsay evidence. As per the case set up by the prosecution, the deceased along with Ishrudeen were committing theft and they were caught and were given beatings. The deceased succumbed to his beatings. He further submits that the prosecution has examined wife of the deceased and the complainant as PW-5 and PW-7, respectively. Both of them did not support the case of the prosecution and they have been declared hostile by the learned Public Prosecutor. Further, the complainant has refused to recognize the petitioner as one of the assailants during his deposition. Further, the petitioner is the first time offender and he is not involved in any other case and the alleged weapon used in the incident is not the deadly weapon and it would be a moot point to be decided by the learned trial Court whether the petitioner can be held liable for an offence under Section 302 of IPC.



The learned State counsel has filed custody certificate in the Court today which is taken on record and per contra, opposes the grant of regular bail to the petitioner on the ground that petitioner is the main accused and is alleged to have given a blow with a *danda* on the head of the deceased. However, he could not controvert the fact that the petitioner has undergone more than 02 years of custody and he is not involved in any other case.

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 30.03.2023. 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 only 07 out of 23 prosecution witnesses have 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.

**CRM-M-4342-2025****-4-**

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-Ankit 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**

**26.05.2025***Neha*

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