

Vijay SinghPetitioner

State of Punjab ...Respondent

HARPREET SINGH BRAR, J. (ORAL)

The FIR was lodged against co-accused, Rinku Singh, Deepak, Sarwan Kumar, Raju and Shanker Kumar on the basis of secret information received by ASI Shareef Khan of CIA Staff, Barnala on the allegations that on 08.12.2019, 99,000 intoxicant tablets (contained in strips) of CLOVIDOL-100 SR, 6,000 intoxicant tablets of Alprapsafe 0.5 and Rs.35,000/- of drug money were recovered from co-accused, namely, Deepak, Rinku Singh and Sarwan Kumar on intercepting a Car No. HR 67-C 8404 and Swift Car No. DL-5-CF-1328 by ASI, Gurbachan Singh in the presence of Deputy Superintendent of

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Police, namely, Rajesh Kumar Chhiber.

Learned counsel for the petitioner *inter alia* contends that the petitioner is not named in the FIR and has been falsely implicated in the present case only on the basis of disclosure statement suffered by co-accused while in police custody which is hit by Section 26 of the Evidence act. There is nothing on record to suggest the conscious possession of the petitioner over the seized contraband. The petitioner was granted regular bail by this Court vide order dated 28.01.2022 passed in CRM-M-43841-2021 titled as 'Vijay Singh Vs. State of Punjab' (Annexure P-3). Thereafter, the petitioner could not appear before the learned trial Court due to some unavoidable circumstances and he was declared as proclaimed offender on 06.02.2023 and petitioner was arrested on 21.02.2023. The petitioner has approached the Court of learned Special Judge, Barnala for grant of regular bail, however, the same was declined vide impugned order dated 14.08.2023 (Annexure P-4).

Per contra, the learned State counsel opposes the grant of regular bail to the petitioner on the ground that huge quantity of contraband was recovered in the present case and the petitioner has already misused the concession of regular bail once and in case, he is released on regular bail, he is likely to abscond and this will hamper the progress of the trial. State counsel produces the custody certificate of the petitioner which is taken on record.

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 records of the case, it transpires that the petitioner is behind the bars for more than 01 year 08 months and 06 days as on 29.11.2023 and trial of the case has not made much progress as only 06 out of 20 prosecution witnesses have been examined so far, 05 have been given up and 09 more prosecution witnesses are yet to be examined. 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 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 in other cases would not be a ground to refuse grant of concession of regular bail.

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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-Vijay Singh 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

30.11.2023

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