

211 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-61976-2023

Date of decision: 18.12.2023

SUNIL KUMAR @ SUNNY @ JASS

...PETITIONER

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Sehej Sandhawalia, Advocate for the petitioner.

Mr. I.P.S. Sabharwal, DAG, Punjab.

HARPREET SINGH BRAR J. (ORAL)

The prayer in the present petition is made for grant of regular bail in case FIR No.185 dated 04.10.2023 registered under Sections 22(c)/29 of Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station City Budhlada, District Mansa.

2. The FIR was registered on the allegations that police party was patrolling to intercept anti-social elements, when they were near Guru Nanak College Chowk Budhlada, a middle aged man was seen standing nearby. On sighting the police party, he started moving fast and he was carrying a plastic bag in his left hand. He was captured by the Sub-Inspector Bikkar Singh, with the help of the police officials and on suspicion, his search was conducted and he was found to be in possession of 2100 tablets of Lomotil which contains Diphenoxylate Hydrochloride & Atrophine Sulphate. The police party, after complying with the mandate of Section 50 of the NDPS Act, recovered the drugs from the person of the accused. On the basis of ruqa sent by Sub-Inspector Bikkar Singh, the FIR was registered and during investigation, co-accused Chamkaur Singh, from whose possession, 2100 tablets of Lomotil were recovered, made a disclosure statement while in custody and the

petitioner is arrested on the basis of his disclosure statement.

3. Learned counsel for the petitioner *inter alia* contends that there is no evidence on record to indicate the complicity of the petitioner in the alleged occurrence. The disclosure statement made by the co-accused while in police custody is hit by Section 26 of the Evidence Act. Except the disclosure statement of the co-accused, there is nothing to prove the conscious possession of the petitioner over the seized contraband. The petitioner is a Chemist by profession and having a valid licence for sale, transport and possession of scheduled narcotic drugs. The investigating agency has verified his licence from the concerned quarters and it was found to be valid on the date of recovery of the contraband from co-accused Chamkaur Singh.

4. Per contra, learned State counsel opposes the grant of regular bail to the petitioner on the ground that investigation is still pending and the petitioner, if allowed bail, can influence the witnesses, however, the learned State counsel could not controvert the fact that the petitioner was having a valid licence and is not involved in any other case under the NDPS Act.

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, it transpires that the petitioner is behind the bars since 07.10.2023 and the culpability, if any, of the petitioner would be seen at the time of the trial.
7. Accordingly, the present petition is allowed. The petitioner Sunil Kumar *alias* Sunny *alias* Jass is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of the CJM/Duty Magistrate concerned.
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.

December 18, 2023
manisha

(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |