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215 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-62830-2023 (O&M)
Date of Decision: 19.12.2023

KULWINDER SINGH @ KAKI

...Petitioner

V/S

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Satnam Singh Gill, Advocate
for the petitioner.

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

HARPREET SINGH BRAR J. (Oral)

1. This is the first petition under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 59 dated 01.08.2023 registered under Section 21 of NDPS Act at Police Station Kiratpur Sahib, District Rupnagar.

2. FIR in the present case was registered on allegations that when the police party was present near Electricity Grid in connection with patrolling and in search of anti social elements, at about 08.50 PM, one Sikh boy riding Activa was coming from the side of Kotla Power Grid. On seeing the police party, he threw the polythene envelope carried by him in his left hand towards the bushes on his left hand side and tried to turn back. Then ASI Harjit Singh with the help of companions apprehended the young boy and asked his name and address. He disclosed his name as Kulwinder Singh @ Kaki son of Ujagar Singh, resident of Kalyanpur, Police Station Kiratpur Sahib, District Rupnagar. The registration of number of his Active was PB-16E-5583. Thereafter, he was asked the reason for throwing the polythene envelope by him. He

told that there are intoxicant injections and intoxicant vials in the polythene envelope thrown by him. Above mentioned Kulwinder Singh @ Kaki could not produce any license or permit for keeping intoxicant injections and intoxicant vials. Thereafter, a case under Section 21 of NDPS Act was registered against the petitioner for keeping intoxicant injections and intoxicant vials, in his possession.

3. Learned counsel for the petitioner inter alia contends that petitioner is innocent and the mandatory safeguards provided under the NDPS Act have not been followed. The alleged recovery of 10 injections of Buprenorphine falls under the non-commercial quantity as per the scheduled attached with the Act and 10 vials of AVIL Pheniamine does not fall under the ambit of NDPS Act. The alleged recovery made from the petitioner does not fall under the commercial quantity and therefore, the embargo under Section 37 of NDPS Act would not be attracted.

4. Per contra, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that he is a habitual offender and involved in 3 more cases under the NDPS Act.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that the petitioner is in custody since 01.08.2023. Investigation of the case is complete and Investigating Agency has already submitted the final report under Section 173 Cr.P.C. and the trial of the case has not made any progress as out of 14 cited prosecution witnesses, none has been examined so far. Culpability, if any, would be determined at the time of trial.

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. In view of the ratio of law laid down by Hon'ble Supreme Court in ***Prabhakar Tiwari Vs. State of UP and Anr.*** 2020(1) RCR (Criminal) 831 and ***Maulana Mohd. Amir Rashadi Vs. State of U.P. and Others*** 2012(2) SCC 382, the involvement of accused in other criminal cases cannot be the sole ground to deny him the concession of bail.

7. In view of the above, petitioner- Kulwinder Singh @ Kaki is ordered to released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

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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.
9. The petition is allowed.

19.12.2023
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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