

Present: Mr. Harsh Aggarwal Advocate for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR J. (ORAL)

This is the first petition filed under Section 439 of Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.125 dated 29.06.2023 registered under Sections 381 and 120-B of Indian Penal Code at Police Station City-I, Sangrur.

2. The present case was lodged on the statement made by the complainant on the allegations that the petitioner along with 02 more persons, have committed theft in his medicine shop, situated in front of Civil Hospital. 05/06 persons have been working at that shop and the petitioner was also working there for the last three years. The other accused namely Jashan is the medical representative and used to visit the shop of the complainant. The complainant has a very strong suspicion that the medicine stock in his shop has been stolen by the petitioner and other co-accused in the last one year. On 19.05.2023, when the shop was to be closed, the father of the complainant noticed that the petitioner had separated some of the medicines and at the time of closing of the shop, he immediately went outside from the back gate of the shop. The father of the complainant had sent some of the employees to chase the petitioner, but by that time, the petitioner had succeeded in running away.

On checking the CCTV footage, they came to know that petitioner had taken out different strips of medicines from different stocks and he was concealing these medicines at the counter, near the back gate of the shop and he picked up those medicines from the back gate of the shop and fled away. As such, in this manner, medicines worth Rs.25-30 lacs have been taken away by the petitioner and other co-accused.

3. Learned counsel for the petitioner *inter alia* contends that there is a delay of more than one month in lodging the present FIR. The alleged incident had taken place on 19.05.2023 and the FIR was lodged on 19.06.2023, after due deliberation. The case set up by the prosecution is highly improbable as even after entertaining suspicion against the petitioner for the last one year, no complaint was made before the concerned jurisdictional police authority and no record has been provided with regard to the value of medicines, which were found missing from the stock of the complainant. The investigating agency has already concluded the investigation and petitioner is behind the bars since 03.10.2023.

4. Per contra, the learned State counsel, on instructions from ASI Jasvir Singh, opposes the prayer of grant of regular bail to the petitioner on the ground that there is sufficient material collected by the investigating agency which clearly indicates the complicity of the petitioner and the CCTV footage clearly establishes the theft committed by the petitioner.

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 of the case, it transpires that the investigating agency has already concluded the investigation and submitted the final report under Section 173 Cr.P.C. on 29.11.2023. Trial of the case has not made any progress yet as none of the prosecution witnesses has been examined so far. The case is triable by Magistrate and maximum sentence provided under Section 381 of IPC is up to 07 years. Culpability, if any, would be determined at the time of the trial. No useful purpose would be served by further detention of the accused-petitioner.

7. Keeping in view the facts and circumstances of the case, the present petition is allowed without commenting upon the merits of the case lest it may prejudice the outcome of the trial and the petitioner-Reeshu Dev 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.

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.

January 11, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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