

of regular bail by this Court vide order dated 08.12.2023 (Annexure P-2) passed in CRM-M-47511-2023. Learned counsel further submits that case of the petitioner is identical to that of co-accused Amardeep, as both of them were nominated on the basis of disclosure statement made by the co-accused, from whose possession the alleged contraband was recovered. Learned counsel further contends that the disclosure statement made, while in police custody, has no evidentiary value in the eyes of law and it is *per se* not admissible in view of the judgment of Hon'ble Apex Court passed in ***Toofan Singh Vs. State of Tamil Nadu 2021(4) SCC 1***. The petitioner is behind the bars since 02.02.2023.

4. Per contra, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that the car from which the alleged contraband was recovered is owned by the petitioner and he is involved in one more case under NDPS Act.

5. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that petitioner is behind the bars for more than a year. Investigating Agency has concluded the investigation and submitted the final report under Section 173 of Cr.P.C. on 02.10.2023. Trial of the case has not commenced as none out of 24 prosecution witnesses, has been examined so far. So further incarceration of the petitioner without there being the prospect of the conclusion of the trial in the near future, would be violative of Article 21 of the Constitution of India. Culpability, if any, would be determined at the time of the 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, the present petition is allowed and the petitioner- Ashok Kumar 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.

13.02.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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