

3. Learned counsel for the petitioner *inter alia* contends that the petitioner is having clean antecedents and he has been nominated as accused in the present case, only on the basis of disclosure statement suffered by the co-accused, while in police custody, which is hit by the provisions of Section 27 of the Evidence Act and it has no evidentiary value in the eyes of law. The Recovery made from the co-accused is marginally higher than the non-commercial quantity. There is nothing on record to prove the conscious possession of the petitioner over the alleged contraband. The vehicle, in which, the co-accused was traveling, has no connection with the petitioner. Learned counsel further relies upon the judgment of the Hon'ble Supreme Court in ***Toofan Singh vs. State of Tamil Nadu, (2021) 4 SCC 1.***

4. Per contra, the learned State counsel opposes the grant of regular bail to the petitioner on the ground that there is sufficient material available on record to prove the involvement of the petitioner in the smuggling of Opium.

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 learned counsel for the parties and after perusing the records of the case, it transpires that the petitioner is behind the bars since 20.11.2023 and he is not involved in any other case. The trial of the case is likely to take long time to conclude. 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, the petitioner-Mohammad Nasir Alam 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.

February 28, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

- (i)

Whether speaking/reasoned

Yes/No
- (ii)

Whether reportable

Yes/No