

CRM-M-12588-2024
Date of decision: 15.03.2024

Sambhu KushwahaPetitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Manpreet Singh Sandhu, Advocate and
Mr. Vikas Prakash, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 439 of Cr.P.C. seeking grant of regular bail in case bearing FIR No.218 dated 12.07.2023 under Sections 20/61 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') registered at Police Station Dera Bassi District SAS Nagar.

The present FIR was lodged on the basis of secret information received by ASI Kuldeep Singh on the allegations that the petitioner is engaged in selling *ganja* in the area of Dera bassi by bringing it from Bihar and today also petitioner is bringing *ganja* from Ambala side to Haldiram Jawaharpur. In case interception is made, he can be apprehended with huge amount of *ganja*.

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On finding the information provided by the secret informer as credible, a *ruqa* was sent. On the basis of the said information, barricade was laid and petitioner-Sambhu Kushwaha was apprehended and 7 Kg of *ganja* was recovered from his possession.

Learned counsel for the petitioner *inter alia* contends that the identically placed co-accused, namely, Hari Ram and Leelawati Devi have been granted the concession of regular bail by this Court vide common order dated 06.12.2023 passed in CRM-M-44886-2023 titled as '*Hari Ram Vs. State of Punjab*' and CRM-M-44899-2023 titled as '*Leelawati Devi Vs. State of Punjab*' (Annexure P-2) and from the possession of the petitioner also, quantity of 7 kg of *ganja* was alleged to have been recovered. He further submits that the petitioner is behind the bars since 12.07.2023.

Per contra, learned State counsel, on instructions from HC Mukesh, opposes the prayer for grant of regular bail to the petitioner on the ground that the total quantity is 24 kg of *ganja* which was recovered from all the accused persons and as such, the petitioner is not entitled to the relief of regular bail.

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.”

Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 12.07.2023. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case has not made much progress as out of 11 prosecution witnesses none has been examined so far. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

In view the above, the present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner-Sambhu Kushwaha 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.

Nothing observed hereinabove shall be construed as expression of

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opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

15.03.2024
Neha

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