

CRM-M-14153-2024

206 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-14153-2024 (O&M)
Date of Decision: 22.03.2024

PAWAN KUMAR

...Petitioner

V/S

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ashish Rana, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG Punjab.

HARPREET SINGH BRAR J. (Oral)

1. This is the first petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 177 dated 28.10.2017 registered under Sections 15, 22, 29, 61 and 85 of NDPS Act at Police Station City Malout, District Sri Muktsar Sahib.
2. Present FIR was registered on the allegations that on 28.10.2017, ASI Harvinderpal Singh along with other police officials apprehended three persons while they were coming on the motorcycle. On inquiry, they disclosed their names as Rakesh Kumar alias Bassa, Pawan Kumar alias Pamma (petitioner herein) and Paramjit Singh alias Pamma. On search, 1 Kg. poppy husk and 100 loose tablets were recovered from the polythene, which was hanging on the handle of motorcycle, 40 strips, each containing 10 tablets (total 400 tablets) of Alprozolam and 4500 loose tablets were recovered from the polythene, which was carried by Pawan Kumar alias Pamma (petitioner), and 20 strips, each containing 10 tablets (total 200 tablets) of Alprozolam and 1900 loose tablets were recovered from the polythene, which was carried by Paramjit Singh alias Pamma. From the

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possession of accused, 1 Kg. Poppy husk, total 600 tablets of Alprazolam and 6500 loose tablets were recovered. As per the report of Chemical Examiner, each tablet in parcel-3 was weighing 131.41 mg. and in parcel-4 weighing 132.34 mg. contains Alprazolam salt. Similarly, each loose tablet in parcel-2 weighing 404.53 mg, in parcel-3 weighing 402.08 mg. and in parcel-4 weighing 395.43 mg. contains Tramadol Hydrochloride salt.

3. Learned counsel for the petitioner *inter alia* submits that petitioner was granted the concession of regular bail in the FIR(supra) by learned Special Judge, Sri Muktsar Sahib vide order dated 04.12.2017 (Annexure P-2) and the petitioner was attending the trial proceedings on each and every date and never absented himself till 24.07.2023, as on 19.07.2023, the petitioner was arrested in another FIR, in which he was nominated on the basis of disclosure statement made by one Neeta Kumar and due to his confinement in judicial custody, he could not appear before the learned trial Court on 24.07.2023 and due to his non-appearance on that day, his bail was cancelled and his bail bonds and surety bonds were forfeited vide order dated 24.07.2023 (Annexure P-4). It is further contended that learned trial Court has straightaway issued non-bailable warrants against the petitioner without executing other modes of securing presence of the petitioner as he could have easily been produced through production warrants. The petitioner after obtaining the bail in the other FIR by a Co-ordinate Bench of this Court on 20.01.2024 (Annexure P-8), again applied for grant of regular bail before the learned Special Judge, Sri Muktsar Sahib, which was dismissed vide order dated 28.02.2024.

4. Per contra, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that his role is fully established

in the alleged occurrence. However, he could not controvert the fact that petitioner was already on bail in the FIR(supra) before his arrest in the other case.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that petitioner is behind the bars for 05 months and 13 days as on 20.03.2024 and the petitioner was already on bail in the FIR(supra) and he has already been granted regular bail in the other FIR as well. The conclusion trial would take sufficient long time to conclude and no useful purpose would be served by keeping the petitioner in further incarceration. 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 stage 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 demo cracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

6. Accordingly, the present petition is allowed. The petitioner- Pawan Kumar is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

7. 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.

22.03.2024
Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No

(HARPREET SINGH BRAR)
JUDGE