

265 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-14549-2024 (O&M)
Date of decision: 07.08.2024**

KULDEEP

...PETITIONER

V/S

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Raman Kumar, Advocate
 for the petitioner.
 Mr. Vikas Bhardwaj, AAG Haryana.

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. 128 dated 10.04.2023 registered under Sections 21(B) (Section 29 of NDPS Act subsequently added) at Police Station Faridabad Old, District Faridabad.

2. In brief, the prosecution story is that on 10.04.2023, Sub Inspector Sunder Singh with Constable Sanjay 2914 and Constable Surinder 728 were present in old Mandi for Crime Investigation where informer *khas* visited and informed that a person named Sunder @ Guruji who is from Mewat, is sitting in his white colour Tata Punch car near Old Bhadana Office, who has intoxicant smack(Heroin). If raid is conducted then he can be apprehended with the contraband. Finding the information being reliable, raid was conducted and it was found that a young man was sitting in the white coloured Tata Punch car number bearing registration No. HR72-G-0914. On the basis of suspicion, young boy was apprehended. Then upon interrogation, individual told his name as Sunder @ Guruji. A notice under under Section 50 of NDPS Act was given to said Sunder @ Guruji about searching the dashboard of his car as per rules.

Sunder @ Guruji on reading and understanding notice u/s 50 NDPS Act



desired that the dashboard of his car be searched by gazetted officer. Then gazetted officer namely Sh. Harish Yadav, Quality Control Inspector attached with the Police Station was requested to come to the spot and when he reached there, search of aforesaid vehicle was conducted and a polythene pouch containing Narcotic material Smack(Heroin) was recovered from the car's dashboard. After removing the plastic polythene, smack(heroin) weighing 223 grams was recovered. On the basis of aforesaid allegations, FIR(supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that petitioner is not named in the FIR(supra) and he has been implicated in the present case only on the basis of disclosure statement suffered by the co-accused, while in police custody, which has no evidentiary value in the eyes of law. Admittedly, the petitioner has not been found in conscious possession of any contraband and after two days of registration of the FIR(supra), the petitioner has been involved in one more case under the NDPS Act, in which also, the petitioner was implicated on the basis of disclosure statement only. There is no incriminating evidence available on record to connect the petitioner with the recovery of alleged contraband.

4. Per contra, the learned State counsel opposes the prayer made by learned counsel for the petitioner on the ground that petitioner is the main accused and co-accused namely Sunder @ Guruji has procured the contraband from the petitioner and he is a habitual offender and involved in one more case under the NDPS Act. As such he is not entitled to grant of regular bail.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that petitioner is behind the bars since 01 year 02



months and 12 days as on 06.08.2024. Trial of the case is likely to take long time to conclude as out of total 17 prosecution witnesses, none 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.

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. 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."

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

9. 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.

August 07, 2024
Ajay Goswami

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

(HARPREET SINGH BRAR)
JUDGE