

CRM-M-20727-2023
Date of decision: 20.03.2024

Manoj Kumar

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. P.S. Sekhon, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.13 dated 19.02.2023 under Sections 22/29/61/85 of the NDPS Act registered at Police Station Khanauri, District Sangrur.

The FIR (*supra*) was registered on the allegations that on 19.02.2023, ASI Babu Singh along with other police officials was present near old *chungi*, Narwana Road, Khanauri in connection with patrolling and checking of suspected persons. At about 05:10 P.M., two ladies were seen coming on foot from Narwana side. One lady was holding a black colour bag in her right hand who on seeing the police party threw the said bag and strips were scattered on the road. Both the ladies tried to flee away. Both the ladies were apprehended. On being inquired, the lady who threw the bag disclosed her name as Surjit Kaur along with other particulars and other lady disclosed

her name as Amandeep Kaur along with other particulars. On checking the said bag, 28000 tablets of Lomotil were recovered.

Learned counsel for the petitioner *inter alia* contends that admittedly, the petitioner is not named in the FIR and the alleged contraband was recovered from the possession of co-accused-Surjit Kaur and Amandeep Kaur. The petitioner was nominated only on the basis of disclosure statement suffered by co-accused while in police custody which has no evidentiary value in the eyes of law. He further relies upon the ratio of law laid down by the Hon'ble Supreme Court in 'Tofan Singh Vs. The State of Tamil Nadu' passed in Criminal Appeal No.1043 of 2021 decided on 22.09.2021. It is further contended that the petitioner is behind the bars since 07.03.2023 and involved in one more case under the NDPS Act in which he is already on bail and there is nothing on record to indicate the conscious possession of the petitioner over the alleged contraband.

Per contra, the learned State counsel opposes the grant of bail to the petitioner on the ground that the complicity of the petitioner is duly established on the basis of call details between the petitioner and other co-accused. He further submits that the petitioner is involved in one more case.

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 07.03.2023. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court on 15.06.2023. Charges were framed on 08.08.2023 and trial of the case has not made much progress as only 01 out of 19 prosecution witnesses 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.

Keeping in view the law laid down by the Hon'ble Supreme Court of India in 'Prabhakar Tewari Vs. State of U.P. and another' 2020 (1) R.C.R. (Criminal 831) and 'Maulana Mohd. Amir Rashadi Vs. State of U.P. and Another', 2012 (2) SCC 382, the involvement of the petitioner in other cases would not be a ground to refuse grant of concession of regular bail.

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-Manoj 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.

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.

(HARPREET SINGH BRAR)
JUDGE

20.03.2024
Neha

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