

Bhupinder Singh @ Modi @ PoodiPetitioner

State of Punjab ...Respondent

Present: Mr. Gursimran Singh Bawa, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

As per prosecution version, on 28.08.2016, accused Bhupinder Singh (the present petitioner) and Shamsher Singh @ Shera were found on motorcycle in the area of parking opposite the Passport Office. Police party headed by SI Nishan Singh on the basis of secret information apprehended them and from the possession of accused, Shamsher Singh @ Shera 100 grams of intoxicant powder (Alprazolam) was recovered. They could not produce any document of ownership of motorcycle.

Learned counsel for the petitioner *inter alia* contends that admittedly, the recovery of 100 grams of Alprazolam falls within the ambit of non-commercial quantity as the non-commercial quantity as per the schedule attached with the Act is more than 100 grams and petitioner was not found in

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the conscious possession of the alleged contraband and the alleged recovery was made from the co-accused, namely, Shamsher Singh @ Shera. The petitioner could not appear before the learned trial Court on 26.07.2022 and as such, his bail bonds and surety bonds were cancelled and forfeited to the State. Consequently, his warrants of arrest and proclamation were issued. The petitioner could not appear before the learned trial court as he was apprehended in another FIR and after his release on bail, the petitioner surrendered in the present case on 21.04.2023 before the learned trial Court and since then, he is behind the bars.

Per contra, the learned State counsel, on instructions from ASI Surjit Singh, opposes the grant of bail to the petitioner on the ground that petitioner is involved in other criminal cases and is a habitual offender. Earlier also, he remained absconded and was declared as proclaimed offender.

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 21.04.2023 and the alleged contraband recovered from the possession of the co-accused, does not fall within the ambit of commercial quantity and as such, embargo under Section 37 of the NDPS Act would not be created. 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. 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-Bhupinder Singh @ Modi @ Poodi 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

25.01.2024
Neha

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