

212
IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH
Crl. Misc. No. M-46816 of 2023

Monu
.....Petitioner

versus

State of Haryana
.....Respondent

Crl. Misc. No. M-42563 of 2023

Pardeep Kumar
.....Petitioner

versus

State of Haryana
.....Respondent

Crl. Misc. No. M-46395 of 2023

Krishan
.....Petitioner

versus

State of Haryana
.....Respondent

Date of Decision: February 14, 2024

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present:- Mr. B.S. Beniwal, Advocate
for the petitioner in Crl. Misc. No. M-46816 of 2023

Mr. Sushil Sheoran, Advocate
for the petitioner in Crl. Misc. No. M-42563 of 2023

Mr. Jainainder Saini, Advocate
for the petitioner in Crl. Misc. No. M-46395 of 2023

Ms. Geeta Sharma, DAG Haryana

Harpreet Singh Brar, J. (Oral)

1. All these petitions are being decided by the common order. However, the facts are being taken from CRM-M-46816-2023.
2. This is the first petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner(s) in the case bearing FIR No.21 dated 14.01.2023, under Sections 21-C/27-A of the NDPS Act, registered at Police Station Adampur, District Hisar, Haryana.
3. The brief facts of the case are that co-accused Ravinder @ Bhola was arrested with the alleged contraband of 500 gm Heroin on 14.01.2023. The police recorded his disclosure statements on 15.01.2023 and 16.01.2023. In his disclosure statement dated 15.01.2023, he stated that he brought the alleged contraband from Delhi along with co-accused-brothers namely Amardeep and Pardeep. In his disclosure statement dated 16.01.2023, he rejected his earlier disclosure statement and stated that he along with his father Krishan, brother Amardeep and brother Pardeep brought the alleged contraband from Delhi.
4. Learned counsel for the petitioners *inter alia* contends that the similarly situated co-accused namely Amardeep and Ashok Kumar were granted the concession of regular bail by this Court vide order dated 08.12.2023 passed in CRM-M-47511-2023 and order dated 13.02.2024 passed in CRM-M-6422-2024. Learned counsel further submits that case of the petitioner(s) is identical to the aforementioned of co-accused as both of them were nominated on the basis of disclosure statement made by the co-accused, from whose possession the alleged contraband was recovered. Learned counsel further contends that the disclosure statement made while in police custody has no evidentiary value in the eyes of law and it is *per se* not admissible in view of the judgment of

Hon'ble Apex Court passed in ***Toofan Singh Vs. State of Tamil Nadu 2021(4) SCC 1***. The petitioners are behind the bars since 24.06.2023, 21.01.2023 and 29.06.2023 respectively.

4. Per contra, learned State counsel opposes the prayer for grant of regular bail to the petitioner(s) on the ground that the petitioner(s) is habitual offender and he is involved in three more cases under NDPS Act, as such he is not entitled to be released on regular bail.

5. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that petitioner(s) are behind the bars for more than seven months. Investigating Agency has concluded the investigation and submitted the final report under Section 173 of Cr.P.C. on 02.10.2023. The trial of the case has not commenced as none out of 24 prosecution witnesses, has been examined so far. So further incarceration of the petitioner(s) 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. 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.”

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 them the concession of bail.

7. In view of the above, the present petitions are allowed and the petitioners- Monu, Pardeep Kumar and Krishan are ordered to be released on regular bail during trial on their furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

8. 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.

February 14, 2024
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(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No