

CRM-M-56747-2023
Date of decision: 05.03.2024

...PETITIONER

V/S

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR J. (ORAL)

This is the first petition filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.57 dated 09.04.2019 registered under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 and offence under Sections 379 & 471 (added later on) of Indian Penal Code, 1860 at Police Station Raja Sansi, District Amritsar Rural.

2. Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case and the alleged contraband recovered from the possession of the petitioner does not fall within the ambit of commercial quantity. As such, the embargo under Section 37 of the NDPS Act is not attracted. The petitioner was initially granted bail by learned Additional Sessions Judge, Amritsar on 28.11.2019 (Annexure P-2). The report under Section 173 Cr.P.C. was submitted before the Court concerned in the year 2019. Thereafter, the petitioner continued to appear before the learned trial Court on each and every date, however, after the occurrence of Covid-19 pandemic in the year 2021, the working of the trial

Courts was restricted and the case listed before the trial Court was adjourned on several occasions and the bail of the petitioner was cancelled by the learned trial Court on 29.10.2021. After the cancellation of bail, the warrants were issued against the petitioner, which were never executed. Thereafter, the petitioner was arrested on 06.05.2023. The petitioner was never declared as proclaimed offender and his absence from the trial Court is not intentional and he was never served with the warrants of arrest and the petitioner is not involved in any other case under the NDPS Act.

3. Per contra, learned State counsel opposes the prayer of the petitioner on the ground that the petitioner concealed himself intentionally and did not attend the trial Court for a long period. Custody certificate filed by the respondent-State is taken on record.

4. 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.”

5. Having heard learned counsel for the parties and after perusing the records of the case, it transpires that the petitioner has already been in custody for 01 year, 07 months and 06 days as on 04.03.2024 and out of 12 witnesses cited by the prosecution only 01 has been examined so far. The trial of the case is likely to take long time to conclude. Culpability, if any, would be determined at the time of the trial. No useful purpose would 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.
6. Keeping in view the facts and circumstances of the case, the present petition is allowed. Without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner-Palwinder Singh @ Sunny 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.
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.

March 05, 2024
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(HARPREET SINGH BRAR)
JUDGE

- (i)

Whether speaking/reasoned

Yes/No
- (ii)

Whether reportable

Yes/No