

CRM-M-59150-2023
Date of decision: 14.03.2024

Chanan SinghPetitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Amit Arora, 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.0004 dated 13.01.2020 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Khalra, District Tarn Taran.

Learned counsel for the petitioner has placed on record the medical certificate of the petitioner in compliance of order 29.11.2023 passed by this Court and the same is taken on record. Registry is directed to tag the same at an appropriate place in the file.

The present FIR was registered on the allegations that on 13.01.2020, the police party was patrolling and was going from Khalra to Village Narla on Government Vehicle Bolero which was being driven by HC Salwinder Singh and two persons were apprehended on suspicion and they disclosed their names as Chanan Singh (the petitioner herein) and Gurpreet

Singh. The plastic bag thrown by the accused persons were searched and intoxicating tablets were recovered and from the bag held by the petitioner, 630 tablets were recovered and 290 tablets were recovered from the bag held by co-accused-Gurpreet Singh.

Learned counsel for the petitioner *inter alia* contends that the mandatory provisions of the NDPS Act are admittedly not complied with and non-adherence to the safeguard provided under the Act would vitiate the entire trial and it would amount to violation of Article 21 which ensures free and fair investigation. The contraband allegedly recovered from the petitioner is marginally higher than the commercial quantity and petitioner has undergone a custody of more than 01 year and 09 months. The challan was presented way back on 03.06.2020, charges were framed on 04.08.2020 and the prosecution has failed to conclude its evidence. He further placed reliance on the judgment of this Court passed in CRM-M-349-2021 titled as 'Harpreet Singh Vs. State of Punjab' decided on 01.07.2021.

Per contra, the learned State counsel, on instructions from SI Kulwinder Singh, opposes the prayer for grant of regular bail to the petitioner on the ground that petitioner is found under conscious possession of commercial quantity, as such, he is not entitled to the relief of regular bail. Further, he could not controvert the fact that the petitioner is not involved in any other case and the quantity is marginally higher than the commercial quantity and fairly admits that out of 08 PWs only 02 PWs have been examined so far.

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.”

This Court in ‘**Rajender Singh @ Raju Vs. State of Haryana**’ and ‘**Iqbal Singh Bali Vs. State of Punjab**’ 2022 (2) Law Herald 1493, while dealing with the issue of granting bail in a case in which the quantity of the alleged contraband is marginally higher than the commercial quantity, granted bail to the accused therein.

Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars for more than 01 year and 09 months and the trial of the case has not even reached halfway mark as only 02 out of 08 prosecution witnesses have been examined so far. The culpability, if any, would be determined at the time of trial. 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.

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-Chanan Singh 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

14.03.2024
Neha

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