

CRM-M-63803-2023

218 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-63803-2023 (O&M)

Date of Decision: 05.01.2024

AMRITPAL SINGH

...Petitioner

V/S

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Kanika Garg, Advocate
for the petitioner.

Mr. Subhash Godara, Additional AG Punjab.

HARPREET SINGH BRAR J. (Oral)

1. This is the first petition under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 183 dated 06.09.2023 registered under Sections 21(b), 25, 29, 27-A, 61 and 85 of NDPS Act at Police Station Chheharta, District Amritsar.

2. The present FIR was lodged on the complaint made by ASI Jatinderpal Singh on the allegations that he along with other police officials were on patrolling duty for intercepting the anti-social elements. Police party noticed one motor cyclist coming from the inner side of the road. On sighting the police party, he became perplexed and tried to slip away. But he slipped and fell down while turning on the road. The pillion rider who was a clean shaved young boy started throwing polythene bags on the road. The complainant with the help of his colleagues nabbed both the persons. Both the persons disclosed their identity as Gurwinder Singh @ Rinku and Joban Singh. 155 Grams of Heroine was found in their possession and as such FIR on the basis of *ruqa* sent by the investigating

3. Learned counsel for the petitioner *inter alia* contends that the petitioner is not named in the FIR and he has been involved on the basis of confessional statement made by co-accused Joban Singh, while in police custody, which has no evidentiary value in the eyes of law. Moreover, the alleged drug money amounting to Rs. 4,40,000/- was also recovered from the co-accused Joban Singh. The petitioner is not involved in any other case and there is nothing on record to prove the conscious possession of the petitioner over the seized contraband.

4. Per contra, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that the complicity of the petitioner is fully established from the evidence available on record. However, learned State counsel has not been able to controvert the fact that the alleged recovery of contraband falls under the non-commercial quantity and the petitioner is not involved in any other case.

5. Having heard learned counsel for the parties and after perusing the records of the case, it transpires that the petitioner is behind the bars since 09.09.2023. Investigating Agency has concluded the investigation and final report under Section 173 Cr.P.C. has been presented before the concerned Court on 04.11.2023. Trial of the case is likely to take long time to conclude. No useful purpose would be served by keeping the petitioner in further incarceration. Culpability, if any, would be determined at the time of 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 above, the present petition is allowed and petitioner- Amritpal Singh is ordered to released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.
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.

05.01.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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