

and all the three accused were apprehended with 1200 kg of poppy husk which was recovered from the alleged trola. Thereafter, 18 kg of poppy husk was recovered from co-accused, namely, Maggar Singh and Charanjit Singh.

Learned counsel for the petitioner *inter alia* contends that admittedly, the petitioner was behind the bars in FIR No.143 dated 07.09.2021 under Sections 15/18 of the NDPS Act, registered at Police Station Bhikhi, District Mansa and he remained in custody from 13.09.2021 till 16.11.2023 and thereafter, he was released on bail and the FIR (*supra*) was registered on 17.04.2023. It is further contended that the petitioner is not named in the FIR and he has been nominated as an accused only on the basis of being a registered owner of the alleged trola from which, the alleged contraband was recovered. He further relies upon the affidavit (Annexure P-2) and submits that the petitioner has already sold this trola to the wife of co-accused-Gurpal Singh on 09.07.2021 i.e. much prior to the registration of the FIR (*supra*) and as such, he has no connection whatsoever with the alleged contraband recovered from the possession of the co-accused.

Per contra, the learned State counsel has filed the status report which is taken on record and on instructions from ASI Avtar Singh, opposes the grant of regular bail to the petitioner on the ground that the petitioner is registered owner as such for all intention and purposes, he is liable for the offence under Section 29 of the NDPS Act. He further submits that petitioner is a habitual offender and involved in one more case under the NDPS Act.

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 FIR (*supra*) was registered when the petitioner was already in judicial custody in another FIR and it would be a moot point to be determined whether the petitioner could be held liable under Section 29 of the NDPS Act or not in the light of the fact that the trolly in question was already sold to the wife of co-accused-Gurpal Singh on 09.07.2021. The petitioner is behind the bars since 21.07.2023. 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 as out of 18 prosecution witnesses, none has been examined so far. 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-Naib 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

15.03.2024
Neha

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