



219

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-2059-2025

Date of decision: 08.05.2025

Ashfaq

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Samay Sandhawalia, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking regular bail in case bearing FIR No.388 dated 06.09.2024 (Annexure P-1) under Sections 20 and 29 of the NDPS Act registered at Police Station Gandhi Nagar, District Yamuna Nagar.

A police party was present near Kamani Chowk, Yamuna Nagar, in connection with patrolling, where a special informer came up and gave a secret information that Vishal Rana son of Jasbir Singh sells *ganja* and even today, he is carrying a contraband and selling the same sitting in his room at his house in Shiv Colony and if a raid is conducted now at his house he can be apprehended with *ganja patti*. On finding the information credible, the Investigating Officer informed the senior police officials and sent a report under Section 42 of the NDPS Act and FIR (*supra*) was registered.

Learned counsel for the petitioner *inter alia* contends that the petitioner is not named in the secret information. In the first disclosure statement on 07.09.2024 made by the co-accused, he named one Sohieb Khan and thereafter, on 09.09.2024, co-accused-Vishal made another disclosure



CRM-M-2059-2025

-2-

statement during his custodial interrogation which is not admissible in the eyes of law as the same is hit by Section 26 of the Indian Evidence Act. Except the disclosure statement of the co-accused, there is no other concrete evidence against the petitioner. He further submits that the petitioner is in custody since 01.10.2024 and till date, not even a single prosecution witness has been examined out of 15.

The learned State counsel has filed custody certificate in the Court today which is taken on record and per contra, opposes the grant of regular bail to the petitioner on the ground that during investigation, the petitioner was found to be the supplier of the contraband, as such, his complicity is duly proved on record. He is involved in one more case under the NDPS Act and as such, does not deserve any relief.

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 the petitioner is behind the bars since 01.10.2024. 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



CRM-M-2059-2025

-3-

made much progress as out of 15 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-Ashfaq 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

08.05.2025

Neha

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