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217 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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Date of Decision: 30.04.2025

SHILISH KUMAR

...PETITIONER

Versus

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Himanshu Setia, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG Punjab.

Harpreet Singh Brar, J. (Oral)

1. This is the first petition filed under Section 483 of Bhartiya Nagrik Suraksha Sanhita, 2023 for grant of regular bail to the petitioner in case bearing FIR No. 275 dated 16.04.2024 registered under Sections 17(C) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station City Sirsa, District Sirsa.
2. Brief facts which are essential for disposal of this petition are that on 16.04.2024 co-accused Rajender Kumar Yadav was arrested along with 02 kilograms 605 grams of opium contained in polythene bag without any permit or license in the area of Police Station City Sirsa and after complying with the provisions of NDPS Act he stated in his disclosure statement that recovered contraband was purchased from the petitioner.
3. Learned counsel for the petitioner *inter alia* contends that petitioner has been falsely implicated in the present case and he is neither named in the FIR, nor any recovery has been effected from his conscious possession. Rather 02 kilogram 605 grams of opium has been recovered from the exclusive and

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conscious possession of the co-accused namely Rajender Kumar Yadav and petitioner has been nominated as accused in the present case only on the basis of disclosure statement of said co-accused, during his custodial interrogation, which has not evidentiary value in the eyes of law. Further, the quantity of contraband involved in the present case is marginally higher than the commercial quantity and if the weight of the bag is deducted, then it would come less than the commercial quantity. The petitioner is behind the bars since 10.09.2024. However, petitioner is involved in one more case under the NDPS Act, but he has been granted regular bail in that case by learned Additional District Sessions Judge, Sirsa vide order dated 19.10.2024 (Annexure P-3) and the said case is pertaining to non-commercial quantity.

4. Learned State counsel produces the custody certificate of the petitioner, which is taken on record and *per contra*, opposes the prayer made by the petitioner on the ground that complicity of the petitioner is duly established as he is the supplier of the contraband recovered from the co-accused. As such, he is not entitled to any relief by this Court. However, he could not controvert the fact that trial of the case is yet to commence as charges have not yet been framed and investigation of the case is complete.

5. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars from the last 07 months and 16 days as on 29.04.2025 and trial of the case is yet to commence as charges have not yet been framed and investigation of the case is complete. Thus, conclusion of trial will take considerable long time.

6. In view of the ratio of law laid down by Hon'ble Supreme Court in **Prabhakar Tiwari Vs. State of UP and Anr.** 2020(1) RCR (Criminal) 831 and **Maulana Mohd. Amir Rashadi Vs. State of U.P. and Others** 2012(2) SCC



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382, the involvement of accused in other criminal cases cannot be the sole ground to deny him the concession of bail.

7. 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."

8. Further the culpability, if any, would be determined at the time of trial and as such, no useful purpose will be served by further detention of the petitioner-accused. 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.

9. In view the discussion above, the present petition is allowed. Accordingly, without commenting upon the merits of the case, the petitioner-Shilish Kumar is ordered to be released on regular bail during pendency of the trial, on furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court/Duty Magistrate.



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10. Nothing observed hereinabove shall be construed to be expression of an opinion by this Court on merits of the case. The learned Court below is directed to proceed with the matter on its own merits, lest it may prejudice the trial.

(HARPREET SINGH BRAR)
JUDGE

30.04.2025

Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No