



225

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

CRM-M-4341-2025

Date of decision: 16.07.2025

Harpal Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Karan Choudhary, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

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.26 dated 19.03.2024 under Section 21(b) of the NDPS Act (Sections 29/27-A of the NDPS Act and Section 25 of Arms Act added later on) registered at Police Station Kalanaur, District Gurdaspur.

The FIR (*supra*) was registered on the allegations levelled in the FIR as reproduced below:-

'SHO, PS Kalanar, "Jai Hind". Today I ASI alongwith ASI Randhir Singh 509, ASI Sawinderpal 1030, ASI Kashmir Singh 686, HC Sukhdev Singh 541 after taking laptop and printer and investigating kit along, were present near T Point Kalanaur regarding patrolling and checking of bad elements then secret informer met me and informed that Love Khokhar s/o Bobby Khokhar r/o Shikar Machhia, PS Kotli Surat Mallia and Chatar Singh s/o Hari Singh r/o Village Rod, PS Janjheli, Distt. Mandi (Himachal Pradesh) are coming from Gurdaspur side to Kalanaur on their motorcycle Splendor black coloured without having number who are having intoxicant substance (heroin) with the who sell the same to the customers after roaming on their motorcycle. If naka bandi is laid at bus stand Narawali and vehicles are checked then intoxicant substance (heroin) can be recovered from them. Upon which, on the information of the secret informer, I ASI instructed the colleagues and started conducting checking of vehicles strictly after laying nakabandi at bus stand Narawali then after some time, one motorcycle Splendor black coloured without numbered, was seen coming from the side of Gurdaspur on which two youths were sitting who were indicated to stop by me with the torch having in my right hand. That motorcyclist on seeing the police party suddenly



tried to turn back the motorcycle and the person sitting as pillion rider on the motorcycle tried took out a polythene bag from the right pocket of the pant worn by him and tried to throw the same, who was apprehended by me with the help of colleagues and enquired about his name and address. Upon which, motorcyclist disclosed his name as Love Khokhar s/o Bobby Khokhar r/o Machhia, PS Kotli Surat Malli and the pillion rider disclosed his name as Chatar Singh s/o Hari Singh r/o Village Rod, PS Janjheli, Distt. Mandi (Himachal Pradesh). Before conducting the checking of the polythene bag which was tried to throw away by accused Chatter Singh, public was tried to join into the police party but everyone showed their helplessness and did not join into the police party. Upon which, the polythene bag recovered from Chatter Singh was opened and checked then from the polythene, intoxicant substance like heroin got recovered which was weighed by me on the computerized scale and which came to be 115 heroin type of intoxicant substance alongwith polythene bag. That recovered 115 grams heroin type intoxicant substance alongwith polythene bag put into a plastic box by me and parcel was prepared and sealed by me with my seal N.K/1 and took into police possession vide separate memo, the sample seal was prepared separately. The seal after use, handed over to ASI Randhir Singh 509/G and the motorcycle Splendor without numbered, black coloured took into police possession vide separate memo. Due to affecting chance recovery from accused Love Khokhar and Chatter Singh, no gazetted officer could be called at the spot. Accused Love Khokhar s/o Bobby Khokhar r/o Shikar Machhia, PS Kotli Surat Mali and chatter Singh s/o Hari Singh r/o Village Rod, PS Janjheli, Distt. Mandi, Himachal Pradesh after keeping in their possession 115 grams of heroin type of intoxicant substance have committed offence u/s 21(b)-61-85 NDPS Act. Upon which, after writing the ruka, the same is being sent to the police station by hand through HC Sukhdev Singh 541/G for registration of FIR: After registering the FIR, number be intimated. Special reports be issued and be sent to the officers. Control room be informed through Email/wireless. I ASI alongwith colleagues busy in investigation at the spot. Sd- Naresh Kumar ASI, PS Kalanaur dated 19.03.2024. Today at bus stand Narawali at 08.25 pm.'

Learned counsel for the petitioner *inter alia* contends that perusal of the FIR (*supra*) clearly indicates that initially 115 grams of *heroin* was recovered from the conscious and exclusive possession of co-accused, namely, Love Khokhar and Chatter Singh and they were apprehended at the spot along with the contraband and during their custodial interrogation, both of them suffered a disclosure statement and named one, Varinder Singh, from whom they have procured the contraband. After the arrest of Varinder Singh, 5.5 grams of *heroin* was recovered and during his custodial interrogation, he disclosed the name of the petitioner from whom he has procured the



CRM-M-4341-2025

-3-

contraband. He further submits that the recovered contraband does not fall under the ambit of commercial quantity, as such, the embargo under Section 37 of the NDPS Act is not attracted in the present case. Further, on the basis of disclosure statement made by co-accused-Varinder Singh, the petitioner was nominated as an accused, however, it is an admitted fact that nothing has been recovered from the conscious and exclusive possession of the petitioner. Further, any statement recorded by the police official under Section 67 of the NDPS Act would be hit by Sections 25/26 of the Indian Evidence Act. The petitioner has suffered incarceration of more than 01 year and 02 months and till date only 01 prosecution witness has been examined out of 16.

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 the petitioner is the supplier of the contraband and his complicity is duly established during investigation and the contraband recovered in the present case falls within the ambit of commercial quantity. He further submits that petitioner is involved in one more case and thus, he does not entitle to 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 25.04.2024. 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 made much progress as only 01 witness out of 16 prosecution witnesses 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-Harpal 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

16.07.2025

Neha

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No