



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

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CRM-M-11583-2025 (O&M)
Date of decision: 06.03.2025

Vinod Kumar

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Lovepreet Singh Sidhu, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR J. (Oral)

1. Prayer in this petition filed under Section 483 of the BNSS, 2023, is for grant of regular bail to the petitioner in FIR No.117 dated 17.03.2020 registered under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') at Police Station Azad Nagar Hisar, District Hisar.
2. The brief facts of the case are that on 16.03.2020, ASI Naresh Kumar along with other police officials was present at Bus Stand Muklan. A secret informer informed him that Mohit son of Wazir and Vinod (petitioner) son of Jagdish are involved in smuggling of Opium and they are coming towards Hisar from Rajgarh with Opium in the Hyundai Xcent car bearing registration No.HR-84-4721 and they can be apprehended, if a raid is conducted. On this secret information, Constable Dinesh Kumar was sent to Police Station Azad Nagar, Hisar



and a raiding party was constituted. After some time, Hyundai Xcent car bearing registration No.HR- 84-4721 was seen coming from the side of Rajgarh and on seeing police party, they tried to turn it back. On the basis of suspicion, they were apprehended and on enquiry, the driver disclosed his name as Mohit and the boy, who was sitting on the conductor side revealed his name as Vinod. A notice under Section 50 of NDPS Act was served upon them. They gave their willingness for checking in the presence of Gazetted Officer. HPS Narendar Kumar was called at the place of occurrence. After checking, Opium weighing 01 Kilo 750 grams wrapped in a transparent polythene was recovered from the possession of Vinod. Opium was taken into possession. Recovery memo was prepared. Petitioner along with co-accused were arrested. Thus, the FIR (supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner was earlier granted regular bail in the FIR (supra) vide order dated 14.07.2020, passed by learned Additional Sessions Judge, Hisar and the petitioner has been regularly appearing before the learned trial Court, however, he could not appear before learned Court below on 05.05.2020 and consequently, his bail was cancelled and surety bonds were forfeited and the petitioner was never served with the non-bailable warrants as he was confined in Kanawati Jail (Madhya Pradesh) in another case and he was produced before the learned trial Court by way of production warrants as discernible from the order dated 25.10.2023 (Annexure P-5). The petitioner has suffered total incarceration of 03



months and 24 days and the alleged contraband, which was recovered from the possession of the petitioner does not falls within the ambit of commercial quantity and the absence of the petitioner before the learned trial Court was not deliberate. He further submits that the petitioner has only missed 04 dates of hearing before the learned trial Court when another FIR was registered in Madhya Pradesh against him and the petitioner has already been granted the concession of bail in the case, which was registered in the State of Madhya Pradesh.

4. Learned counsel for the petitioner further submits that there are total 16 prosecution witnesses cited in the list of witnesses, out of which, 04 PWs have been examined till date and the trial is likely to take long time in conclusion.

5. *Per contra*, learned State counsel has filed custody certificate today in the Court which is taken on record and he opposes the prayer made by learned counsel for the petitioner on the ground that there is nothing on record to prove that the petitioner has absented from the learned trial Court due to some justifiable cause. The learned trial Court was well within its power to cancel the bail bonds and surety bonds of the petitioner and has rightly dismissed his bail application, however, she could not controvert the fact that the alleged contraband of Opium recovered from the possession of the petitioner does not falls within the ambit of commercial quantity.

6. 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 03 months and 24 days. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court. Charges were framed and trial of the case has not made much progress. Out of 16 prosecution witnesses, 04 PWs have been examined so far.

7. A two Judge Bench of Hon'ble Supreme Court in ***"Satender Kumar Antil vs. 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 namely Vinod Kumar is ordered to be released on regular bail during pendency of the trial, on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court/Duty Magistrate.

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

06.03.2025
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No