

**CRM-M-13170-2025**  
**Date of decision: 10.07.2025**

**...PETITIONER**

## ...RESPONDENT

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2. Succinctly, the facts of the case are that on 04.08.2019 when SI Birender Singh (complainant) along with other police officials was present at Aggarsain Chowk, Circular Road Rewari for patrolling duty, a secret information was received that huge quantity of Ganja Patti Narcotic Drugs was kept in the residential house of Yogesh son of Niranjan Yadav situated at Bada Talab in street in front of Bhairav Baba Temple and he could be apprehended with the contraband, if raided. On this, the police party reached at the stated place and search was conducted in the house of Yogesh and 62.876 Kilogram Ganja Patti was recovered. He could not produce any permit or licence for having the contraband. Yogesh was arrested in this case



and thereafter, other accused Krishan, Harsh and Umed were arrested. In the disclosure statement of co-accused Umed, the name of petitioner was disclosed. However, the petitioner could not be arrested by police and challan against co-accused was submitted before the court. Police came to know that petitioner was lodged in Tihar Central Jail No.3, Delhi and thereafter, he was joined in investigation in the present case on 20.12.2024. After completion of the investigation, challan against the applicant-accused has been submitted in the court on 01.02.2025. Hence, the FIR (*supra*) was registered.

3. Learned counsel for the petitioner *inter alia* contends that admittedly, the alleged contraband has been recovered from the conscious and exclusive possession of co-accused, namely, Yogesh and petitioner is not connected with the alleged recovery in any manner. He further contends that the petitioner has been nominated as accused on the basis of disclosure statement made by co-accused during his custodial interrogation, which has no evidentiary value in the eyes of law and it is a trite law that any statement recorded by the police official under Section 67 of NDPS Act, would be hit by provisions contained in Sections 25 and 26 of the Evidence Act. Furthermore, apart from the disclosure statement of co-accused, there is no other material evidence to connect the petitioner with the alleged offence. Although, the petitioner is involved in one more case under the NDPS Act, however, he is on bail in that case.

4. Learned State counsel produces the custody certificate of the petitioner, which is taken on record and *per contra* opposes the prayer for grant of regular bail to the petitioner on the ground that he is part of a gang, who was involved in drug trafficking and the complicity of the



petitioner is duly established. Further, the petitioner is involved in one more case under the NDPS Act. However, he could not controvert the fact that the petitioner is on bail in that case.

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 06 months and 20 days. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case will take considerable long time to conclude. 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.

6. 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."*

7. 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.

8. In view the discussion above, the present petition is allowed. Accordingly, without commenting upon the merits of the case, the petitioner-Birender Tanwar @ Virender 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.

9. 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.

July 10, 2025  
*manisha*

(HARPREET SINGH BRAR)  
JUDGE

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|------|---------------------------|--------|
| (i)  | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable        | Yes/No |