



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

CRM-M-14226-2025
Date of decision: 20.03.2025

RAFIKUL MALLICK

...PETITIONER

V/S

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kawalpreet Singh Virk, Advocate for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana &
Mr. Anil Kumar Chahal, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. Present petition has been filed under Section 483 BNSS, 2023 for grant of regular bail to the petitioner in case bearing FIR No.244 dated 14.09.2024, registered for the offences punishable under Sections 20(b)(ii)(c), 21(c) and 29 of NDPS Act at Police Station Sector-53, District Gurugram.
2. The brief facts of the present case are that on 14.09.2024, SI Surender Singh along with other police officials was on crime patrolling duty near Power House, Sector 52A, Gurugram, where he received a secret information to the effect that one person, namely, Manirul Sheikh was standing with narcotic substances in red coloured bag and if raid is conducted, he can be apprehended. Upon secret information SI Surender Singh along with his team, public witness and secret informer reached at stated place and apprehended the accused. Upon his search, a red-yellow coloured bag was found in his right hand, in which two white coloured polythene bags were found. In first bag, contraband 299 grams heroin/smack and in other bag, 253



grams *Ganja* was found. Hence, the FIR (*supra*) was registered. On the basis of his disclosure statement, petitioner-Rafikul Mallick was arrested.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner has not been named in the FIR (*supra*). Admittedly, no recovery of contraband was effected from the conscious and exclusive possession of the petitioner. He further contends that there is no evidence on record to connect the petitioner with the alleged recovery of contraband. He submits that the whole story of the prosecution has been fabricated by the police officials and the petitioner has been nominated in the present case, only on the basis of disclosure statement made by co-accused, namely, Manirul Sheikh, during his custodial interrogation, which has no evidentiary value in the eyes of law and the same is barred by Section 25 of Evidence Act. He further submits that the prosecution is relying upon the phone calls exchanged between the petitioner and co-accused. However, the reason behind the phone calls is that the petitioner and co-accused are residents of West Bengal and they were living in Gurugram to earn their livelihood. As such, due to acquaintance, the petitioner used to talk with co-accused. Furthermore, the investigation of the case is complete and the petitioner is behind the bars since 15.09.2024 and no other case under the provisions of NDPS Act is pending against him.

4. 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 petitioner is involved in illegal trafficking of narcotic substances and his complicity is revealed during investigation. He further submits that petitioner and co-accused Manirul Sheikh have made several calls to each other and one co-accused is yet to be arrested.



However, he could not controvert the fact that out of total 17 prosecution witnesses, none has been examined till date.

5. 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.”

6. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 21.09.2024 as per his custody certificate. 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 none out of 17 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.

7. As far as the issue of the petitioner being a habitual offender is concerned, the Hon'ble Supreme Court in *Prabhakar Tewari vs. State of U.P. 2020 (11) SCC 648* and *Maulana Mohd. Amir Rashadi vs. State of U.P. and another (2012) 2 SCC 382*, has categorically held that the grave and serious allegations leveled against the accused or pendency of other cases against him cannot be the only basis to refuse the prayer of bail.

8. In view of 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-Rafikul Mallick is ordered to be released on regular bail during the pendency of the trial on furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

9. 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.

March 20, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

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