



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

228

CRM-M-17183-2025 (O&M)
Date of decision: 03.04.2025

Hawa Singh
State of Haryana

Versus

....Petitioner
....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sourabh Sheoran, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, 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.326 dated 22.10.2024 registered under Sections 20(b)(ii)B of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') (Section 29 of the NDPS Act, added later on) at Police Station Sadar Mahendergarh, District Mahendergarh.
2. The brief facts of the case are that on 18.09.2024, ASI Rohtash Kumar, along with other police officials, was present at Adalpur Bus Stand, Dadri Mohindergerh road, for narcotic detection. A secret informer alerted ASI Rohtash Kumar that Ramesh Kumar and Hawa Singh were traveling to Adalpur on a motorcycle bearing registration No.HR-82A-7772 carrying narcotics. Thereafter, a raiding party was formed and posted near Zile Singh's house at Adalpur Ki



Dhani. Soon thereafter, the said motorcycle was spotted, and upon seeing the police, the riders attempted to turn away but they were apprehended. The rider of the motorcycle disclosed his name as Ramesh Kumar and the pillion rider of the motorcycle disclosed his name as Hawa Singh. Following the due procedure under the NDPS Act, a search was conducted, resulting in the recovery of 1kg 900 grams of Ganja from Hawa Singh (petitioner herein), concealed in a black polythene bag. Subsequently, the impugned FIR was registered.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case and the similarly situated co-accused of the petitioner namely Ramesh Kumar and Zile Singh have already been granted the concession of regular bail by the learned Sessions Judge, Narnaul vide order dated 05.12.2024. Further the alleged recovery of 01 Kg. 900 gms. of Ganja falls within the ambit of intermediate quantity and as such, the embargo created by Section 37 of the NDPS Act, would not apply in the instant case. He further submits that the petitioner is not involved in any other case registered under the NDPS Act and there is total non-compliance of mandatory provisions providing certain safeguards under the NDPS Act.

4. Learned counsel for the petitioner further submits that the petitioner is in custody for the last more than 05 months and not even a single prosecution witness has been examined before the learned trial Court 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 the recovery of 01 Kg. 900 gms. of Ganja has been recovered from the conscious and exclusive possession of the petitioner and he is involved in 02 more cases i.e. FIR No.207 dated 29.08.2012 and FIR No.202 dated 07.11.1999, however, he could not controvert the fact that the petitioner is not involved in any other case registered under the NDPS Act and the similarly situated co-accused of the petitioner have already been granted the concession of regular bail.

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 more than 05 months. 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. Not even a single prosecution witness has 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. Further 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.

10. In view the discussion above, the present petition is allowed. Accordingly, without commenting upon the merits of the case, the petitioner namely Hawa Singh 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.

11. 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

03.04.2025
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No