

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

CRM-M-22221-2025

Date of decision: 01.05.2025

....Petitioner

Versus

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Kamalpreet Kaur Dhaliwal, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

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.359 dated 20.09.2024 under Sections 15(C) & 29 of NDPS Act, Sections
347(1) & 238 of BNS (wrongly mentioned as BNSS) registered at Police
Station Kalanaur, District Rohtak, Haryana (Annexure P-1).

The FIR (*supra*) was registered under Section 15 of the NDPS Act pursuant to the alleged recovery of 352 kilograms of poppy husk recovered on the spot from a vehicle purportedly driven by co-accused, Krishan and accompanied by another co-accused, Chet Ram and both accused were arrested on the spot within the jurisdictional police station, Kalanaur.

Learned counsel for the petitioner *inter alia* contends that the petitioner is not named in the FIR (*supra*). Admittedly, the poppy husk was allegedly recovered from the conscious possession of co-accused, Krishan and Chet Ram and both of them were arrested at the spot. The petitioner has been nominated as an accused only on the basis of disclosure statement made by co-



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accused during their custodial interrogation which has no evidentiary value in the eyes of law as the same is hit by Section 25 of the Indian Evidence Act. The petitioner is behind the bars since 29.10.2024 and he is not involved in any other case.

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 there is sufficient material to prove the complicity of the petitioner as he has played an active role in providing the vehicle used in transportation of the contraband. However, he could not controvert the fact that the petitioner is not involved in any other case.

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.”

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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 29.10.2024. 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 out of 41 prosecution witnesses, none 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.

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-Shri Bhagwan 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

01.05.2025
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No