



CRM-M-27323-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-27323-2024

Date of Decision: 02.06.2025

Bal Kishan Dhaker

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. Aditya Sanghi, Advocate and
Mr. Pradeep Bhardwaj, Advocate for the petitioner
Ms. Ankita Ahuja, Assistant Advocate General, Haryana

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner, through instant petition under Section 439 of Code of Criminal Procedure, 1973 is seeking regular bail in FIR No.117 dated 27.06.2022 under Sections 279, 336, 427 of Indian Penal Code, 1860 and Sections 15 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Naggal, District Ambala

2. Learned counsel for the petitioner *inter alia* contends that Jaskaran Singh was the main accused who has already been granted concession of regular bail vide order dated 02.04.2025 passed by this Court in CRM-M-18923 of 2024. The petitioner was implicated on the basis of disclosure statement of Jaskaran Singh. No recovery was effected from the petitioner. He is in custody since 06.01.2024. There are 32 witnesses and none has been examined. There is allegation of recovery of poppy husk from the main accused.



3. Learned State counsel does not dispute the fact that no recovery was effected from the petitioner in the instant case though poppy husk with opium was recovered in another case from his possession. She further concedes that there are 32 witnesses and none has been examined. As per custody certificate, the petitioner is in custody for 1 year and 5 months. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

4. 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.”

5. Intent of arrest and reason of denial of bail is to:

- i) secure the appearance of the accused at the time of trial;



ii) allay possibility of repeating of offence & jeopardising own life on account of grim prospect of being convicted; and

iii) avoid possibility of tampering of evidence and security of witnesses who may be pressurised or maltreated.

6. A person who seeks to be liberated must take judgment and serve sentence in the event of his conviction. The nature of the crime charged, severity of punishment prescribed, prime facie available evidences, history & background of the accused may indicate that any amount of bond and surety is not going to secure presence of accused, at the time of conviction. Detention or arrest not only deprives a person from his fundamental right of personal liberty guaranteed by Article 21 but also freedom guaranteed by Article 19(1) of our Constitution.

7. The main accused from whom recovery was effected has already been granted concession of regular bail by this Court vide order dated 02.04.2025 passed by this Court in *CRM-M-18923 of 2024*. The petitioner is in custody since 06.01.2024. No recovery is to be effected from the petitioner. The Trial Court yet has to return definite findings on the disputed issues. There are 32 prosecution witnesses and till date none has been examined, thus, there is abysmally low possibility of conclusion of trial in near future. Prosecution has right to arrest, investigate the matter and restrain an accused from manipulating or winning over witnesses, similarly accused in view of Article 21 of the Constitution of India has right to defend himself and put forth his stand which cannot be possible while in custody. The prosecution has not led any convincing/plausible documentary or oral



evidence indicating possibility of petitioner fleeing from justice or tampering the evidences or winning over/threatening the witnesses, the petitioner deserves concession of regular bail.

8. In view of afore-stated facts and circumstances, this Court is of the considered opinion that present petition deserves to be allowed and accordingly allowed. The petitioner is ordered to be released on bail subject to conditions as may be imposed by Trial Court/Illaqa/Duty Magistrate concerned.

9. If the petitioner or his family members/associates make any attempt to threat/intimidate the witnesses in the present case, the State would be at liberty to move an application for cancellation of bail granted by this order.

10. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and Trial Court shall proceed without being prejudiced by observations of this Court.

(JAGMOHAN BANSAL)
JUDGE

02.06.2025
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No