



CRM-M-43072-2024

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Learned counsel for the petitioner *inter alia* contends that the petitioner has been nominated as an accused only on the basis of disclosure statement made by co-accused while in police custody which has no evidentiary value in the eyes of law as the same is hit by Section 25 of the Indian Evidence Act. He further submits that admittedly, nothing has recovered from the conscious and exclusive possession of the petitioner. The petitioner is behind the bars since 03.07.2024. He further submits that out of 18 prosecution witnesses only 05 have been examined till date. Although, the petitioner is involved in other case under the NDPS Act but he is on bail as per the custody certificate.

The learned State counsel has filed status report along with custody certificate in the Court today which are taken on record and per contra, opposes the grant of regular bail to the petitioner on the ground that there is sufficient material available on record to indicate the complicity of the petitioner and further, the petitioner is the supplier of the contraband recovered from the co-accused. He is a habitual offender and is involved in four other cases out of which, two are under the provisions of NDPS Act.

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.”

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 03.07.2024. 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 only 05 out of 18 prosecution witnesses have been examined so far.

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.

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-Gurcharat Singh 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

10.03.2025
Neha

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