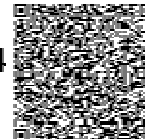


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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

223

CRM-M-54095-2024
Date of Decision : 13.01.2025

GORI DASS @ GORI

.... PETITIONER

V/S

STATE OF PUNJAB

.... RESPONDENT

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present : Mr. Prateek Sodhi, Advocate and
Mr. Mukesh Kumar, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARPREET SINGH BRAR, J. (Oral)

1. The present petition has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking regular bail in case bearing FIR No.70 dated 25.04.2024 under Sections 21(b), 22, 25, 29 and 27(a) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act") registered at Police Station Chheharata, Amritsar Commissionerate, District Amritsar (Section 22(c) of NDPS Act added later on) (Annexure P-1).

2. Brief facts of the case are that FIR (supra) was registered on the allegation that police party was available under the bridge near Dera Baba Darshan Singh, Kale Bypass, Amritsar in connection with

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patrolling. A Swift car was coming from the opposite direction. The police party signaled the said car to stop. On the basis of suspicion, the police party had seen the petitioner handing over one polythene to co-accused Captain Singh @ Kappu who was driving the said car. Both the accused were apprehended at the spot and 10 grams of heroin and 890 intoxicating pills as well as currency notes of Rs. 91,300/- were recovered from Captain Singh @ Kappu. As per report of the Regional Testing Forensic Science Laboratory, Amritsar, recovery of 890 intoxicant pills falls within the ambit of commercial quantity.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case. The case set up by the prosecution is highly improbable. It is not possible to have witnessed the petitioner handing over a polythene bag containing contraband to co-accused at 11.00 p.m. in night in a moving vehicle.

4. Learned counsel for the petitioner further submits that nothing has been recovered from the conscious possession of the petitioner and admittedly, contraband was recovered from the co-accused Captain Singh @ Kappu. Further, the petitioner has no connection whatsoever with the car also nor he was driving the same. The petitioner has clean antecedents.

5. Custody certificate filed by learned State counsel is taken on record.

6. Per contra, the learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that he has handed

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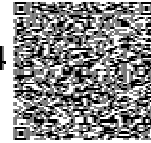
over the polythene from which the contraband was recovered from the co-accused and the quantity of 890 grams of intoxicant pills falls within the ambit of commercial quantity. However, he could not controvert the fact that he is not involved in any other case.

7. 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."

8. 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 25.04.2024. Investigation is complete. The final report

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under Section 173 Cr.P.C. was presented before the concerned Court on 21.05.2022. Charges were framed and trial of the case has not made much progress. Out of 14 prosecution witnesses, not even a single witness has been examined. It would be a moot point to be determined by the learned trial Court whether the petitioner can be held liable for having in his conscious possession commercial quantity of contraband. 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.

9. 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- Gori Dass @ Gori 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.

10. 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.

13.01.2025

anju

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No