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whereas, 04 kg 40 grams of opium was recovered from co-accused-Amarjeet. The petitioner was not aware of the contents of the material placed by the co-accused in the truck. The petitioner is neither the driver nor the owner of the truck. The quantity which was recovered from the conscious possession of the petitioner falls within the ambit of small quantity. The petitioner is not involved in any other case under the NDPS Act and he has suffered incarceration of more than 11 months and the prosecution has not examined a single witness out of cited 25 prosecution witnesses. He further submits that the owner of the truck has already been granted the concession of regular bail by this Court vide order dated 13.05.2025 passed in CRM-M-60419-2024 titled as 'Malkit Singh alias Bobby Vs. State of Haryana' (Annexure P-3).

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 in the present case, 04 kg 40 grams of opium was recovered from the truck and 80 grams of opium has been recovered from the conscious possession of the petitioner, and thus, the quantity recovered in this case falls within the ambit of commercial quantity and as such, the petitioner is not entitled to any relief. However, he could not controvert the fact that the petitioner is not involved in any other case under the NDPS Act and not even a single witness has been examined till date out of 25 prosecution witnesses.

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 05.08.2024. 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 25 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



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the trial, the petitioner-Babu 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

08.07.2025

Neha

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