





CRM-M-4830-2025

-2-

280 kg of *ganja* was recovered and thus, the present FIR.

Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case. Admittedly, the contraband has been recovered from the conscious and exclusive possession of the co-accused, namely, Ram Dass and Neeraj. The petitioner has been nominated as an accused on the basis of disclosure statement made by co-accused during his custodial interrogation which has no evidentiary value in the eyes of law, as such, there is no legal evidence against the petitioner to prove his conscious possession over the alleged contraband. The petitioner is behind the bars since 21.09.2024.

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 complicity of the petitioner is duly established. Apart from the disclosure statement, the CCTV footage of the hotel proves that the petitioner was present in the hotel along with co-accused prior to the occurrence and he is part of the gang who was selling *ganja*. He further submits that the petitioner is also involved in two more cases out of which, one is under the 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 21.09.2024. 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 28 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.

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-Raju Tanwar is ordered to be released on regular bail

**CRM-M-4830-2025****-4-**

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**

**07.07.2025***Neha*

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