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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-522-2023

DECIDED ON: 20th MARCH, 2023

BALVEER @ SUNNY

PETITIONER

VERSUS

STATE OF PUNJAB

RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Ms. Simsi Dhir Malhotra, Advocate
for the petitioner.

Mr. Mohit Chaudhary, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

The jurisdiction of this Court under Section 439 of the Code of Criminal Procedure, 1973 has been invoked for grant of regular bail to the petitioner in case FIR No. 84, dated 23.07.2022, under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act'), registered at Police Station Chabbewal, District Hoshiarpur.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. It is asserted that the recovery in the present case is of 25 grams of Heroin along-with Indian currency notes amounting to Rs.11,550/-. She has contended that as per the FSL report, the recovery is non-commercial in nature. It is further contended that the recovery in the present case is effected from the

Dashboard of the vehicle and in fact the petitioner is not the owner of the said vehicle.

The custody certificate of the petitioner filed by learned State counsel is taken on record and according to the said certificate the petitioner has undergone the incarceration for a period of 7 months and 26 days and is also involved in other cases of a similar nature.

Learned State counsel has opposed the prayer made in the present petition but could not dispute the fact with regard to recovery of contraband which is of non-commercial in nature. He submits that the petitioner is a habitual offender and is involved in various other cases of a similar nature.

As far as the contention of the learned State counsel with regard to the pendency of other cases is concerned, a Division Bench of this Court in the case of “***Rajender Singh vs. State of Haryana***”, 2022(2) ***R.C.R. (Criminal)*** 85 has held that a right under Article 21 of the Constitution of India includes right to speedy trial and expeditious disposal which is also in public interest primarily showing concern on a following view point.

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of

witnesses or otherwise.

This Court would go little further to consider that there is a difference between grant of bail under Section 439 and 438 of Cr.P.C., as compared to suspension of sentence under Section 389 of Cr.P.C.. In the case of suspension of sentence, the conviction order is already there whereas while considering the petition either under Section 438 or 439 Cr.P.C., there may be presumption of innocence which in fact is a fundamental postulate of criminal jurisprudence.

Considering the said principle alone, the Hon'ble Apex Court in the case of ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131*** has held that the bail is the rule and jail is an exception.

This Court is conscious of the fact that the petitioner is involved in other FIRs as has been pointed out by learned State counsel. It is also pertinent to mention here that in the present case the recovery is of non-commercial in nature.

No doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would lend the petitioner in a situation of denial the concession of bail.

If such proposition is accepted and applied at least in this case wherein the petitioner has already faced 7 months and 26 days of

incarceration, keeping the petitioner inside is clearly violative of speedy trial under Article 21 of the Constitution of India, but the same is likely to take long time being wherein it is at the initial stage after a lapse of considerable time.

Accordingly, the present petition is allowed and the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the learned Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

(SANDEEP MOUDGIL)
JUDGE

20th MARCH, 2023
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| 1. Whether speaking/ reasoned : | Yes / No |
| 2. Whether reportable : | Yes / No |