

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

211

CRM-M-3844-2022  
Date of decision: 03.05.2023

GURSEWAK SINGH

....Petitioner

Versus

STATE OF PUNJAB

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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Present : Mr. R. S. Sekhon, Advocate for  
Mr. J. S. Sandhu, Advocate  
for the petitioner  
Mr. H. S. Sullar, Sr. DAG, Punjab.

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AMAN CHAUDHARY. J.

1. Present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in case of FIR No. 62 dated 04.05.2019, registered under Sections 21 and 29 of the NDPS Act at Police Station Sirhali, District Tarn Taran.
2. Learned counsel contends that the petitioner has been in custody for the last about 2 and a half years. His name has surfaced based on the disclosure statement of the co-accused namely Gurdev Singh, from whom 2 Kgs of heroin was recovered. Co-accused Prem Singh who was also nominated based on the disclosure statement has been granted regular bail by the trial Court. He relies on the judgment passed by Hon'ble The Supreme Court in the case of **Toofan Singh vs. State of Tamil Nadu**, 2021 (1) RCR (Crl.) 1. The main accused is also on bail under Section 167(2) Cr.P.C. Though, charges have been framed on 12.02.2021,

but only 2 out of 16 prosecution witnesses have been examined. No recovery has been effected from the petitioner and there is no case pending against him, except that he was convicted in two cases wherein his sentence has been suspended in one by this Court vide order dated 25.01.2023 while in the second, he has undergone his sentence. In this regard, he relies on the judgment passed by Hon'ble The Supreme Court titled as **Maulana Mohd. Amir Rashadi vs. State of U.P. and others**, 2012(2) SCC 382.

3. The custody certificate dated 02.05.2023 has been filed by the learned State counsel. As per the same, the petitioner is behind bars for the last 2 years 5 months and 25 days.

4. Learned State counsel opposes the bail on the ground that the petitioner's name was surfaced based on the disclosure statement of the co-accused from whom heavy recovery of contraband was recovered. The petitioner has been convicted twice over under the NDPS Act. However, he is unable to controvert the submissions with regard to stage of the case, there is no case pending against him under the NDPS Act and co-accused as also the main accused having been granted bail.

5. Heard.

6. Hon'ble The Supreme Court of India in the case of **Maulana Mohd. Amir Rashadi** (Supra) had held that, "As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc."

7. In view of the facts and circumstances of the case, the observations

made in aforesaid judgments, and that the petitioner has been in custody for the last 2 years 5 months and 25 days; both his co-accused are on bail; though, charges have been framed on 12.02.2021, however, only 2 out of 16 prosecution witnesses have yet been examined; the trial is likely to take considerable time, his incarceration would not serve any useful purpose, thus the present petition for grant of regular bail deserves to be allowed.

8. As a result, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate concerned and subject to his not being required in any other case. The petitioner shall abide by the following conditions:-

1. The petitioner will not tamper with the evidence during the trial.
2. The petitioner will not pressurize/intimidate the prosecution witnesses.
3. The petitioner will appear before the trial Court on each and every date fixed, unless is exempted by a specific order of Court.
4. The petitioner shall not commit an offence similar to the offence of which, he is an accused, or for commission of which he is suspected of.
5. The petitioner shall not directly or indirectly coerce, induce, threaten or promise to any person acquainted with the facts of the case so as to dissuade him/ her from disclosing such facts to the Court or to any police officer or tamper with the evidence in any manner.
6. The petitioner shall not in any manner misuse his liberty.
7. The petitioner shall furnish his address and mobile number to the Trial Court forthwith and shall not change the same till the conclusion of the trial and in case for any reason, the petitioner seeks to change any of the aforesaid, the same shall be done only with prior intimation to the learned Trial Court, stating the reason for the same.
8. The petitioner shall deposit his passport, if any, with the Trial Court forthwith and in case, he does not have the passport, he shall furnish a specific affidavit in this regard.

9. It is made clear that in case of any infraction of any of the aforesaid conditions, the State shall be at liberty to seek cancellation of bail as granted to the petitioner by this order.

10. In view of the above, it is clarified that the observations made herein above are limited for the purpose of present proceedings and would not be construed as any opinion on the merits of the case and the trial would proceed independently of the aforesaid observations.

(AMAN CHAUDHARY)  
JUDGE

03.05.2023

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