

215 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-5959-2023

DECIDED ON: 23rd MARCH, 2023

GURMUKH SINGH @ GAGGU

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. C.S. Singh, Advocate
for the petitioner.

Mr. Mohit Chaudhary, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked for the grant of regular bail to the petitioner in case FIR No. 286, dated 07.11.2022, under Sections 21-C and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), registered at Police Station Special Task Force, SAS Nagar, Mohali.

Learned counsel for the petitioner has contended that he has been falsely implicated in the present case, as is evident from the fact that the alleged recovery was effected only from Rajinder, who is the main accused, on 07.11.2022 and on that date the petitioner was in custody in another case bearing FIR No. 149, dated 11.10.2020, under Sections 21(C) and 29 of the NDPS Act, registered at Police Station Haryana, District Hoshiarpur.

Learned State counsel has produced the custody certificate of the petitioner, which is taken on record. According to which the petitioner has

contention is that the petitioner is a habitual offender and is also involved in other NDPS case as well as IPC cases. He submits that the recovery in the present case is of 290 grams of Heroin, which is of commercial nature, therefore, the petitioner is not entitled for the relief as prayed in the present petition.

Having considered the submissions made by learned counsel for the respective parties and also gone through the record, it is evident that though the petitioner was named by the main accused namely Rajinder in fact it is a matter of record that he was in custody on 07.11.2022 in another FIR and therefore, the question of involvement of the petitioner in the present case does not arise at all, who has been roped in the present case merely on the basis of disclosure statement of the main accused Rajinder.

The assertion of learned State counsel with regard to the quantity of the contraband is concerned, there is no direct evidence to connect the petitioner with the contraband in any manner whatsoever, as the recovery was effected from the possession of the main accused Rajinder and the petitioner was not present at the spot or neither the case of the prosecution is that he fled away from the place of occurrence as he was already behind the bars in some other case on that date.

As far as the contention of the learned State counsel with regard to the pendency of another case 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 the 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.

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.

Keeping the petitioner inside is clearly violative of right to speedy trial under Article 21 of the Constitution of India, but the same is likely to take long time as it is still 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

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.

23rd MARCH, 2023
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(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>