

215 **IN THE HIGH COURT OF PUNJAB AND HARYANA**
CHANDIGARH
CRM-M-5878-2023
Date of Decision: 18.04.2023

Akashdeep Singh @ Ricky

...Petitioner

V/S

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. S.P.S. Khaira, Advocate
for the petitioner.

Mr. Gurdarshan Singh Sidhu, AAG Punjab.

DEEPAK MANCHANDA J. (ORAL)

Instant petition has been filed under Section 439 Cr.P.C. seeking regular bail in the case bearing FIR No.3 dated 01.01.2022 (Annexure P-01) registered under Section 21, 21-C, 25 of Narcotic Drugs and Psychotropic Substances Act and Section 427 of the Indian Penal Code at Police Station STF Phase-4, Mohali District S.A.S Nagar, Punjab.

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

Learned counsel for the petitioner contends that the alleged recovery has been planted upon the petitioner and he has been falsely implicated, whereas the FIR has been registered upon the receipt of secret information and there is violation of Section 42 of NDPS Act wherein the complainant has not reduced the information into writing nor he sent a copy of the alleged information so received to his immediate seniors. Learned counsel further contends that as per the FIR, the time of ruqa in the police proceedings, after receipt of secret information by the complainant, is stated to be 1.30 p.m. on 1.1.2022 and consequently, the FIR has been registered

after receipt of police proceedings at Police Station at 5.42 p.m. on 1.1.2022. He submits that as per the final report, search and seizure have been done after 5.30 p.m. on 1.1.2022, which was between sunset and sunrise from a car Make Safari bearing registration No.PB30-H-9559, which is a conveyance within the meaning of Section 42 of NDPS Act. He further submits that the vehicle was stationary at the time when it was allegedly apprehended by the police and the contraband is stated to have been recovered from underneath the seat of the car which was kept concealed in the conveyance. It is argued that compliance of second Proviso to Section 42(1) of the NDPS Act was not done. It is further argued that no other case is pending against the petitioner and he is in custody since 1.1.2022, wherein investigation has been completed and challan stands presented and only 2 prosecution witnesses have been examined till date out of total 18 witnesses. Hence the petitioner is entitled for bail. To support his contention, he relies upon the judgement passed by this Court in **CRM-M-25498-2021 titled as Pankaj Vs. State of Punjab; Gurjant Singh Vs. The State of Punjab, CRM-M-20943-2022 decided on 20.5.2022; Sarabjit Kaur Vs. State of Punjab, CRM-M-26248-2021, decided on 30.3.2022** and by the Hon'ble Supreme Court in Sarija banu (A) Janarthani @ Janani & Anr. Vs. State through Inspector of Police, 2004 (12) SCC 266.

On the other hand, learned State Counsel has opposed the aforesaid prayer. He however, admits that the investigation in the present case has been completed and the challan has been presented on 18.05.2022 and charges have been framed on 08.09.2022. Out of total 18 prosecution witnesses, only two witnesses have been examined till date.

I have heard the learned counsel for the parties and gone through

the entire case file and custody certificate filed by learned State counsel. The petitioner is in custody for a period of 1 year 3 months and 12 days with no other case against him. The investigation of the case has been completed and challan stands presented, where the conclusion of the trial would take considerable time, so no useful purpose would be served by keeping the petitioner in further incarcerated. Reference in this regard be made to ***Sanjay Chandra Vs. CBI, Criminal Appeal No.2178, 2179, 2180, 2181 and 2182 of 2011 (arising out of SLP (Crl.) No. 5650 of 2011*** wherein in Para No.14 it has been observed as under:-

14) In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been

convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.”

As such, sufficient mitigating circumstances are made out to extend the concession of bail to the petitioner. Therefore, without making any expression of opinion on the merits of the case, it is ordered that the petitioner be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate, if not required in any other case.

The petition is allowed.

(DEEPAK MANCHANDA)
JUDGE

18.04.2023
sapna

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