

217 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-11544-2023

DECIDED ON: 14th MARCH, 2023

MUKESH

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Davinder Pal Soni Jura, Advocate
for the petitioner.

Mr. Gagandeep Singh Chhina, AAG, Haryana.

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 FIR No. 147, dated 18.07.2020, under Section 22-B of Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Ding, District Sirsa.

Learned counsel for the petitioner has contended that the petitioner has been nominated as an accused in the present case on the basis of disclosure statement of the co-accused. The allegation against the petitioner is that he sold 520 tramadol capsules to the main accused namely Kuldeep Singh @ Kalu, who has already been granted the concession of regular bail by this Court vide order dated 01.03.2023 passed in CRM-M-59798-2022 and Kuldeep Singh @ Deep. It is asserted that no prosecution witness has been examined so far and the trial of the case will take sufficient long time.

Custody certificate of the petitioner filed by learned State counsel is taken on record. According to which the petitioner has suffered incarceration for a period of 2 years 6 months and 6 days. He opposes the prayer made in the

present petition on the ground that the petitioner is involved in three more cases but is on bail in all those cases.

Considering the fact that the main accused namely Kuldeep @ Kalu from whom the recovery has been effected has already been granted the concession of bail by this Court, this Court is of the considered view that the petitioner also deserves the concession of regular bail in the instant case.

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.

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.

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 2 years 6 months and 6 days of incarceration, keeping the petitioner inside is clearly violative of right to speedy trial under Article 21 of the Constitution of India, which is actually 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 ordered 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.

14th MARCH, 2023
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(SANDEEP MOUDGIL)
JUDGE

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