

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-21789-2023 (O&M)
Date of Decision: 29.05.2023

Balwinder SinghPetitioner

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Imaan Singh Khara, Advocate for the petitioner.
Mr. Rajiv Verma , DAG, Punjab.

SANDEEP MOUDGIL, J. (Oral)

1. The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked for the grant of regular bail to the petitioner-Balwinder Singh in FIR No. 36, dated 12.02.2023, under Section 22(c) of NDPS Act, 1985 registered at Police Station Civil Lines, District Bathinda.
2. Learned counsel for the petitioner vehemently contends that the alleged recovery of contraband has been planted upon the petitioner who was in fact not arrested on the spot rather the petitioner was picked by the police on the basis of wrong information. Neither any link or cogent material is shown to connect the petitioner with the alleged recovered contraband and the authorities & police have failed to comply with the mandatory provisions of Sections 42, 43, 50, 52 and 52A of the NDPS Act.
3. In view of the contentions made in the application i.e CRM-23244-2023 moved under Section 482 Cr.P.C, main case was preponed and status report was called upon regarding the medical condition of wife-

was made upon the medical certificates i.e Annexures P-2 and P-3 dated 07.03.2023.

4. In compliance to the previous order, status report by way of affidavit of Gurpreet Singh, PPS, Deputy Superintendent of Police, City-II, Bathinda dated 28.05.2023 has been filed and the same is taken on record. After having made inquiries on the disability certificates of Parminder Kaur and Ekamjot Singh, the statement of Dr. Tanupreet Kaur, Civil Hospital, Bathinda as well was recorded and concluded that the certificate relied upon by the petitioner Annexures P-2 and P-3 are genuine wherein Ekamjot Singh is 50 % Intellectual Disable and Parminder Kaur is also 50% Intellectual Disable. The combine statement of neighbors and respectable persons of locality have also been taken on record by the Inquiry Officer so deputed by the deponent which reveals that there is no one to take care of both of disabled persons. In support of that, deponent has also attached photographs as Annexures R-1 and R-2, which are sufficient enough to conclude before this Court that the wife and son of the petitioner are actually suffering from intellectual disability to the tune of 50%, who are in immediate need and care of the petitioner, as no one else is there to attend them, as has been specifically stated by the State in Para No.6 of the affidavit.

5. Considering the aforesaid facts and circumstances and looking into totality as well as the medical condition of wife and son of the petitioner, this Court deems it necessary and appropriate to examine the contention of the petitioner for regular bail, since this kind of ailment is a continuous one and is almost incurable as is evident at this stage from the medical certificates and the report attached by the Inquiry Officer.

6. In the light of the above, though the custody period is just 3 months and 12 days but the petitioner is not an habitual offender as is evident from the custody certificate & is not involved in any other case of any nature whatsoever, considering the same to be a peculiar case on humanitarian grounds wherein it would be most appropriate to use the principle '*bail is the rule and jail is an exception*' as observed by the Apex Court in the case of ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131***, which also ensures the protection of life and liberty under Article 21 of the Constitution of India wherein trial is being delayed in the instant case as challan has not yet been filed and the investigation is still going on, since the registration of FIR is 12.02.2023 whereby in fact the stipulated period under the Criminal Procedure Code i.e. 90 days, is already expired.

7. Hence, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the CJM/Duty Magistrate, concerned.

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

29th May 2023
Rajeev (rvs)

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No