

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

210-CRM-M-27226-2023

Date of Decision: 01.06.2023

RISHPAL SINGH ALIAS DAMA

... Petitioner

VS.

STATE OF PUNJAB

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Prateek Gupta, Advocate for the petitioner

Mr. Mohit Chaudhary, AAG Punjab

Sandeep Moudgil, J. (Oral)

The petitioner seeks regular bail in case FIR No.255 dated 24.11.2021 under Sections 21/25/61/85 of Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Samrala, District Ludhiana.

Learned counsel for the petitioner submits that the contraband recovered is marginally higher than the commercial quantity i.e. 290 gms of smack. Though counsel for the petitioner has not addressed on merits except the report of FSL which shows presence of 18.50% of Diacetylmorphine (heroin) in the sample. He further asserted reliance upon the Apex Court in **Nitish Adhikary @ Bapan vs. State of West Bengal SPL (Crl) No.5769 of 2022** decided on 01.08.2022 and **Dheeraj Kumar Shukla vs. State of Uttar Pradesh, SPL (Crl.) No.6690/2022** decided on 25.01.2023 with the fact that the petitioner has also suffered incarceration of 1 year and more than 6 months by now.

On the other hand, learned State counsel has filed custody certificate dated 31.05.2023 which is taken on record. According to the same,

the petitioner has undergone 1 year 6 months and 5 days of custody. He further contended that the quantity recovery from the petitioner is commercial in nature and therefore under Section 37 of the NDPS Act, the petitioner is not entitled to concession of bail. That apart, the petitioner has found involved in various other cases also i.e. FIR No.207 dated 14.08.2015 under Sections 21/61/85 of NDPS Act, registered at PS Patran; FIR No.28 dated 31.01.2018 under Section 21 NDPS Act, registered at PS Guhla; FIR No.50 of 01.01.2021 under Section 21 NDPS Act, registered at PS Khanauri; and FIR No.146 dated 01.01.2020 under Section 21-B/29 NDPS Act, registered at PS Guhla.

Having regard to the orders passed by the Apex Court as has been relied upon by counsel for the petitioner, Section 37 would not be a bar wherein trial is being prolonged for an unreasonable time as is in the present case it is moving at a snail's pace after framing of charges on 19.07.2022. This very fact is evident from the statement of State counsel that out of 13 witnesses only one witness has been examined so far and in that eventuality, it is abundantly clear that it will take certainly long time to conclude and detaining the petitioner behind the bars for an indefinite period would amount to violation of Article 21 of the Constitution of India and is against the principle "Bail is a rule, jail is an exception" as elucidated in the judgement of Apex Court in "***Dataram Singh vs. State of Uttar Pradesh and another***;; (2018) 3 SCC 22".

A Division Bench of this High Court in ***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 a 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.

This Court is conscious of the fact that the petitioner in the instant case is a prior convict and involved in other FIRs as has been pointed out by learned State counsel. However, on the face of it, on a mechanical examination, it is a matter of record that the petitioner is on bail in 2 cases and in one case he has been acquitted. 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, keeping the petitioner inside the jail is clearly violative of speedy trial under Article 21 of the Constitution of India, but the same is likely to take long time being wherein it is 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 the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, concerned.

Before parting with this order to create an equilibrium, the respondent-State would be at liberty to seek cancellation of bail granted vide this order in case the petitioner indulges in a similar offence for which he has already been convicted apart from facing trial in various other cases. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

01.06.2023

V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No