

2023:PHHC:112718

101+203 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27132-2023
DECIDED ON: 28th AUGUST, 2023

JASPAL SINGH @ JASSI

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Saurav Bhatia, Advocate, for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

CRM-29813-2023

This is an application filed under Section 482 Cr.P.C praying for placing on record the application of bail moved before the Ld. Magistrate as Annexure P-14.

For the reasons mentioned in the application, the same is allowed.

CRM-M-27132-2023

1. The jurisdiction of this Court has been preferred under Section 439 Cr.P.C. r/w 437 (6) Cr.P.C in case FIR No.117, dated 29.07.2022, under Section 384, 120-B IPC and Section 25 Act No.54 of Arms Act, 1959, registered at Police Station Sirhind, District Fatehgarh Sahib.

2. Learned counsel for the petitioner contended that the name of the petitioner has been surfaced in the present case on the basis of disclosure statement of Taranjot Singh @ Tanna. It is also referred by the counsel for the

petitioner that Taranjot Singh @ Tanna was earlier named as an accused by another co-accused namely Charanjit Singh @ Channi. It is asserted by the counsel for the petitioner that the petitioner was taken on production warrant and the alleged recovery i.e. one foreign made pistol along with four live cartridges and two country made pistols has been planted upon him.

3. The further assertion made by Mr. Bhatia on behalf of the petitioner is that the petitioner has never been declared proclaimed offender who is behind the bars since 11.10.2022.

4. On the other hand, Mr. Rajiv Verma, Learned State counsel has filed the custody certificate and vehemently argues that the petitioner is a habitual offender and is involved in various other cases. It is the assertion of learned State counsel that in a case bearing FIR No.88 dated 31.08.2016, petitioner is facing conviction for an offence punishable under Section 25 of Arms Act and in that case also the petitioner has suffered incarceration 1 month and 17 days. Apart from conviction in various other cases and in multiple cases approximately in 30 cases the petitioner is either facing trial or investigation.

5. Be that as it may, it is a case of no injury which fact is candidly admitted by Mr. Verma and except the alleged recovery of weapons as narrated above no overt act has been attributed to the petitioner. The star arguments raised by Mr. Bhatia, learned counsel for the petitioner is that there is absolute non compliance of Section 437 (6) Cr.P.C, which needs to be considered and reads thus:-

Section 437:- when bail may be taken in case of non bailable offence

6 If, in any case triable by a Magistrate, the trial of a person accused of any non- bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the

said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

6. In fact in the instant case as well the trial is to be conducted by a Magistrate and Section 384 IPC stands deleted from the narration of the FIR qua the petitioner and the investigation is complete challan stands presented, nothing is to be recovered from the petitioner.

7. 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 petitioner 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.

8. As far as the pendency of other cases is concerned, 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 of the concession of bail.

9. Keeping the petitioner inside is clearly violative of right to speedy trial under Article 21 of the Constitution of India, which is likely to take long time

being at the initial stage after a lapse of considerable time.

10. 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.
11. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

28th AUGUST, 2023
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No