

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-32885-2023

Date of decision : 17.07.2023

Nirvair Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Tushar Sharma, Advocate with
Mr. Aman Kumar, Advocate for the petitioner

Mr. Amit Shukla, AAG, Punjab.

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.15, dated 30.01.2023 registered for the offences punishable under Sections 18, 61 of Narcotic Drugs and Psychotropic Substance Act, 1985 at Police Station Sujanpur, District Pathankot.

2. Custody Certificate of the petitioner has been produced. The same is taken on record.

3. Reliance is being placed upon order dated 6th of June, 2023 passed by Co-ordinate Bench wherein co-accused namely Kashmir Singh has been ordered to be admitted to bail in CRM-M No.28690 of 2023 observing as under :

The petitioner has approached this Court by filing the petition under Section 439 Cr.P.C. seeking regular bail in a case

bearing FIR No.15 dated 30.01.2023 under Sections 18/61 of the NDPS Act, 1985 registered at Police Station Sujampur, District Pathankot.

Learned counsel for the petitioner inter alia contends that the present FIR was lodged on the basis of secret information and petitioner along with two other accused, namely, Gurdit Singh and Nirval Singh were named as accused.

On the basis of secret information, the petitioner along with two other co-accused were apprehended and the Investigating Officer SI Harjinder Singh recovered 1 kg 500 grams of opium from the polythene bag carried by the petitioner. The recovery from the petitioner falls under the non-commercial quantity and as such the embargo under Section 37 (1) (b) of the NDPS Act would not be attracted. The petitioner is stated to be involved in two more cases under the NDPS Act and he has been acquitted in one case and in another case, he is already on bail.

The learned State counsel opposes the grant of regular bail to the petitioner on the ground that he is a habitual offender and earlier also, he has already been involved in a case under the NDPS Act.

Heard counsel of both the parties and perused the records. The Hon'ble Supreme Court in ***Prabhakar Tewari Vs. State of U.P. 2020 (11) SCC 648*** and ***Maulana Mohd. Amir Rashadi Vs. State of UP and another (2012) 2 SCC 382***, has categorically held that the allegation of grave and serious offence and pendency of several cases against the accused cannot be the only basis to refuse prayer of bail.

Keeping in view that the petitioner is in custody since 30.01.2023 and there is no likelihood of trial being concluded in the near future, no useful purpose shall be served by further detention of the accused-petitioner. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial. The present petition is allowed and the petitioner is ordered to be released on regular bail during the pendency of trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

The petition stands disposed of accordingly.”

4. Ld. State Counsel is not in position to make out a case to assert that the case against the petitioner is any way different from that projected against the co-accused Kashmir Singh.
5. I have heard counsel for the parties and have gone through records of the case.
6. Without commenting on the merits of the case and keeping in view the incarceration suffered by the petitioner i.e. 5 months and 13 days coupled with the fact that case of the present petitioner is not distinguishable from that of his co-accused, considering the parity, the petitioner is held entitled to the same relief. Accordingly, the present petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.
7. Needless to say anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

July 17, 2023
Dpr

(Pankaj Jain)
Judge

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