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

CRM-M-33940-2023

Date of decision: 05.12.2023

Karam Singh @ Kama

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Parteek Pandit, Advocate for the petitioner.

Mr. Vinay Kumar Gupta, AAG, Punjab.

KARAMJIT SINGH, J. (ORAL)

1. This is second petition under Section 439 of Cr.P.C for grant of regular bail to the petitioner in case FIR No.54 dated 25.04.2021 under Sections 21 (c), 25, 29 of NDPS Act, Police Station Special Task Force, SAS Nagar, Mohali.

2. The brief facts of the case are that on 25.04.2021, DSP Virender Kumar along with police party was on patrolling duty when he received secret information that petitioner and Gurwinder Singh @ Gindu have smuggled Heroin from across Indo Pak Boarder and petitioner has kept said contraband in house of his sister Manjit Kaur at Village Manakpura in a dicky of Hero Destiny scooter. On this, the police raided disclosed place and effected recovery of 3 kg 244 grams heroin from above stated scooter

which was lying parked in the house of Manjit Kaur. At that time, the petitioner was lodged in jail in criminal case having FIR No.44 dated 08.04.2021 registered in Police Station Special Task Force, SAS Nagar, Mohali. After effecting the aforesaid recovery, the petitioner was arrested in the present case by getting his production warrants.

3. The counsel for the petitioner submits that the petitioner has been falsely implicated in the present case at the instance of police officials. That prior to registration of the present case, the petitioner was arrested on 08.04.2021 in another false case wherein no recovery was personally effected from the petitioner. It is further contended that just after another 15-17 days of the registration of the said case, the police falsely involved the petitioner in the present case by alleging that certain contraband was recovered from house of his sister Manjit Kaur on 25.04.2021. The counsel for the petitioner further submits that Manjit Kaur has not been made accused in the present case and the alleged recovery of 3 kg 244 grams of heroin was not effected on the basis of any disclosure statement made by the petitioner and even the said recovery was not effected on the pointing of or in presence of the petitioner and further the said recovery was not effected from house of the petitioner and thus, making the entire case of prosecution doubtful and further at the time of said recovery, the petitioner was lodged in jail. The counsel for the petitioner further submits that even otherwise, the trial is not progressing ahead and petitioner is in custody for the last about 2 years and 6 months. So prayer is made that the petitioner be released on regular bail.

4. Short reply by way of affidavit of Virender Kumar, Deputy

Superintendent of Police, Special Task Force, SAS Nagar, Mohali filed on behalf of the State is taken on record. The State counsel while resisting the present petition inter alia contends that on the basis of secret information 3 kg 244 grams of heroin was recovered from the house of Manjit Kaur sister of the petitioner and the said contraband falls in commercial quantity and thus, rigor of Section 37 NDPS Act are applicable to the instant case. Further, the petitioner is also involved in 2 other cases under NDPS Act. However, the State counsel has not disputed the fact that the petitioner is custody for the last 2 years and 5 months and that till date prosecution is able to examine 3 of total 28 witnesses.

5. I have considered made by counsel for the parties.

6. Admittedly, at the time of alleged recovery of commercial quantity of contraband on 25.04.2021, the petitioner was lodged in jail in some other criminal case. The said recovery was not effected in presence of the petitioner or on his pointing. As per prosecution, the said recovery was effected from house of Manjit Kaur sister of the petitioner, on the basis of secret information received by the police against the petitioner. It appears that the said recovery was not effected in presence of Manjit Kaur and further she was not nominated as accused in the present case by the police.

7. Admittedly, as per the custody certificate furnished by learned State counsel, the petitioner is in custody for last more than 2 years and 5 months. As has been apprised by the State counsel till date prosecution has examined 3 witnesses out of total 28 witnesses. In the given circumstances, there is little chance that trial is going to conclude in near future. The inordinate delay in trial has restricted the personal liberty of the accused as

guaranteed under Article 21 of Constitution of India and further infracts Fundamental Right to a speedy trial.

8. In the light of the above, this Court is of the view that the petitioner is able to fulfill the parameters provided in Section 37 of the NDPS Act for grant of regular bail.

9. Consequently, without expressing any opinion on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail and surety bonds to the satisfaction of the trial Court/CJM/Duty Magistrate concerned.

10. However, in future if the petitioner commits offence of similar nature, then the prosecution will be at liberty to seek cancellation of the bail of the petitioner in the present case.

05.12.2024

Yogesh

**(KARAMJIT SINGH)
JUDGE**

**Whether speaking/reasoned:-
Whether reportable:-**

**Yes/No
Yes/No**