

2023:PHHC:103183
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-36510-2023
DECIDED ON: 09.08.2023

GURPREET SINGH ALIAS SONI
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Fariad Singh Virk, Advocate
for the petitioner.

Mr. P.S. Bajwa, Addl. AG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 439 of Cr.P.C., seeking regular bail in FIR No.50, dated 10.06.2022, under Section 22 of NDPS Act, 1985, registered at Police Station City Morinda, District Rupnagar.
2. Learned State counsel has filed the fresh custody certificate with correct particulars stating that there are two FIRs of even No. i.e., 28 but the dates are different i.e. 28.01.2018 and another one is 21.06.2020. In the second FIR bearing No.28 dated 21.06.2020, registered at Police Station City Morinda, the petitioner has been acquitted/discharged on 17.11.2022, whereas in the other, which is registered under Section 61 (1) (3) of Punjab excise Act, he is on bail granted by the Court of ACJM Ropar on 28.07.2023.
3. On merit, learned counsel for the petitioner submits that the quantity alleged to have been recovered is non-commercial in nature i.e., 20 grams of *Buprenorphine Hydrochloride power* and Section 37 of NDPS is not attracted. It is further the case of the petitioner that as per the prosecution story, the same has been

petitioner.

4. It is also the contention of the counsel for the petitioner that there is no incriminating material or evidence to connect the petitioner with the said contraband in any manner.

5. Learned State counsel submits that the petitioner is involved in one another case bearing No.28 dated 28.01.2018, registered under Section 61(1) (3) of Punjab Excise Act at Police Station City Rupnagar and can be termed as habitual offender, therefore, does not deserve the concession of bail at this stage.

6. Be that as it may, admittedly, as per the prosecution case, which can be culminated to conclude that recovery effected is non-commercial in nature, but from a polythene bag, which is lying beside the petitioner, where he was seen standing apart from that in another FIR, petitioner is on bail vide order dated 28.07.2023 and even otherwise reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as ***“Baljinder Singh alias Rock vs. State of Punjab”*** decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that 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.

7. Perusal of the custody certificate shows that petitioner has suffered incarceration of 1 year, 1 month and 28 days, wherein out of total 16 witnesses, 4 have been examined so far, which shows that trial is likely to take sometime.

8. Looking into the totality of facts and the discussions made

hereinabove, this Court is of the firm view that no useful purpose would be served

by keeping the petitioner behind the bars for uncertain an period, wherein bail is a rule and jail is an exception and it would also be violative of the principle of right to speedy trial and expeditious disposal under Article 21 of Constitution of India, as has been time and again discussed by this Court, while relying the judgment of the Apex Court passed in *Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131.*

9. In light of the above, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of trial Court/Duty Magistrate, concerned.
10. The present petition is, hereby, allowed.
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.

09.08.2023

Meenu

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No