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2023:PHHC:055882

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-42468-2020
DECIDED ON: 19.04.2023

GURJIT SINGH ALIAS SAINI

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Mandeep Kumar Dhot, Advocate for the petitioner.

Mr. Mohit Chaudhary, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

The jurisdiction of this Court under Section 439 Cr.P.C. for the grant of regular bail in FIR No.122, dated 13.05.2020 under Sections 302, 427, 148, 149, 120-B IPC, Section 25 of the Arms Act and Section 201 IPC (added later on), registered at Police Station Lehra, District Sangrur.

Learned counsel for the petitioner contends that he has been falsely implicated in the instant case and no injury has been attributed to the petitioner. He also contends that the petitioner has already suffered for a long time behind the bar without having any direct evidence to corroborate the same. It is submitted that challan stands presented and out of total 30 prosecution witnesses only two have been examined so far.

Learned State counsel has produced custody certificate, according to which the petitioner has suffered 02 years, 11 months and 4 days in custody and only one case is pending under the Prisons Act wherein he is not on bail.

Having heard learned counsel for the respective parties, this Court is of the considered view that now since the challan stands presented and after framing of charge the trial has proceeded further, no interrogation is required to be made and recovery of the alleged used weapon stands effected, no fruitful purpose would be served by keeping the petitioner behind the bars any more.

As far as the contention raised by the learned State counsel with regard to the pendency of another case is concerned, he is not on bail .

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.

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.

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 and applied at least in this case wherein the petitioner has already faced 2 years, 11 months and 4 days of incarceration, 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.

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.

19.04.2023

manoj

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>