

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

CRM-M-43082-2022

Date of decision : 23.03.2023

Babbu Singh

...Petitioner

Vs.

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Rajesh Bhatheja, Advocate for the petitioner.
Ms. Jasleen Kaur Sidhu, DAG, Punjab.
Ms. Harpreet Kaur, Advocate
for the co-accused-Gurbhej Singh and Jagga Singh.

MANOJ BAJAJ, J.

Petitioner has filed this petition under Section 439 Cr.P.C for grant of regular bail pending trial in case FIR No.26 dated 15.03.2021 registered under Sections 22-C and 29 Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Badhni Kalan, District Moga, who is in custody since his arrest on 15.03.2021.

As per the prosecution case, on 15.03.2021, when the police party was present at Lappo bus stand for patrolling, one secret information was received that Babbu Singh son of Amar Singh resident of Dhurkot, being engaged in selling intoxicant tablets, would be coming to village Dudar toward Lappo on his motorcycle to sell the same. Acting upon the said information, accused was apprehended and upon his search 430 strips of tablets- Clovidol 100-SR (total 4300 tablets) were recovered. On these broad allegations, the above FIR was registered.

Learned counsel for the petitioner submits that the petitioner is in custody for a period of more than two years and his co-accused have already

been released on bail, therefore, the petitioner be also extended the similar concession. He submits that the petitioner is not involved in any other case of similar nature. He prays for bail.

The prayer is opposed by learned State counsel assisted by ASI Tarsem Singh, who argued that the recovery from the petitioner was commercial in nature as per the NDPS Act and the co-accused were also carrying 3600 tablets, however, while granting the bail to the said accused persons, it could not be brought to the notice of the Court that the recovery was also effected from them. She submits that it appears to be *bona fide* omission on the part of the State counsel, who appeared on the said date when the bail to the co-accused were granted. Learned State counsel has argued that on 27.02.2023, this Court *suo moto* issued show cause notice to the co-accused, Gurbhej Singh and Jagga Singh as to why their bail be not cancelled for concealing the fact of recovery of contraband from them. She prays that the petitioner does not deserve the concession of bail.

At this stage, Ms. Harpreet Kaur, learned counsel appearing on behalf of the co-accused, namely, Gurbhej Singh and Jagga Singh submitted that the petition bearing Nos.CRM-M-11859-2022 and CRM-M-1642-2022 filed by these co-accused seeking regular bail contains the averment relating to the recovery of 3600 tablets from them, therefore, it would not be a case of deliberate concealment on the part of the accused persons, who were in custody when the bail order in their favour was passed. During the course of hearing, she has also produced the copy of the bail petitions.

At this stage, learned State counsel on instructions has stated that the accused persons, who have been released on bail are regularly appearing

before the Court on each and every date and hearing. She further on instructions states that after framing of charges on 21.09.2021, no prosecution witnesses has been examined so far out of total 14 witnesses.

After hearing learned counsel for the parties and considering the above background, it becomes clear that in the bail application filed by co-accused-Gurbhej Singh and Jagga Singh the recovery of contraband is specifically mentioned, however, this fact was not brought to the notice of the Court resulting in their release on regular bail. Since the concession is not being misused by them, therefore, it would not be appropriate for this Court to recall the said order at this stage. Further, the trial is yet to commence as no prosecution witness has been examined over a period of a year and six months after framing of charges on 21.09.2021. As the conclusion of trial is likely to consume considerable time, therefore, further detention of the petitioner may not serve any useful purpose, who is presently confined in judicial custody after his arrest on 15.03.2021. Apart from it, custody certificate filed by State counsel by way of affidavit of Rajiv Kumar Arora, Superintendent of Central Jail, Faridkot also shows that the petitioner is not involved in other case of similar nature.

Resultantly, without meaning any expression of opinion on the merits of the case, it is ordered that the petitioner be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

The petition is allowed.

(MANOJ BAJAJ)
JUDGE

23.03.2023

vanita

Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No