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

**CRM-M-46289-2023
DECIDED ON: 07.12.2023**

NIHSAN SINGH @ NISHAN

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. J.S. Sandhu, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 439 Cr.P.C., for grant of regular bail to the petitioner in FIR No.176, dated 04.06.2022, under Sections 21, 25 of NDPS Act, 1985 (Section 29 of NDPS Act added later on), registered at Police Station City Ferozepur, District Ferozepur, Punjab.

2. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case by virtue of disclosure statement made by other co-accused Gurjant Singh, who was actually arrested in the said FIR on 04.06.2022 along with recovery of 300 grams of heroin and drug money of Rs.3,00,000/- from his possession alone. He further contends that the disclosure statement to the effect that Gurjant Singh has sold 200 grams of heroin to the present petitioner-Nishan Singh @ Nishan, is without any basis and any cogent material just to support the version of the prosecution, who was arrested on 10.06.2022 and no recovery could not effected from his possession. Apart from that there is no other incriminating material or version narrated in the FIR or even

in the subsequent investigation conducted by the prosecution, as has been raised by learned counsel for the petitioner.

3. On the other hand, learned State counsel has produced the custody certificate of the petitioner, which is taken on record, to demonstrate that he has suffered incarceration for a period of 1 year, 03 months and 16 days and submits that the petitioner is involved in other cases of NDPS Act, therefore, being habitual offender is not entitled for any concession by way of instant petition, which actually deserves to be dismissed.

4. Looking into the totality of facts and circumstances and also the fact that nothing has been recovered from the possession of the petitioner; investigation stands complete; challan stands filed; the petitioner has suffered incarceration for a period of 1 years, 03 months and 16 days, which in itself is punitive in nature and no one can be punished until or unless guilty is proved beyond reasonable of any doubt and as far as disclosure statement is concerned, is a matter of evidence, which may be proved during the trial proceedings but till then the petitioner could not be kept behind the bars.

5. This Court is sanguine of the fact that according to the proposition settled by the Apex Court that keeping somebody behind the bars, till his guilt is proved, for an indefinite period amounts to infringement of his right to life and liberty, as enshrined under Article 21 of Constitution of India and is against the principle "*bail is rule*" and "*jail is an exception*".

6. As far as the pendency of other cases is concerned, as has been stated by learned State counsel, 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. In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

8. In the afore-said terms, the present petition is hereby allowed.

9. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

07.12.2023

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

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