

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-52875-2023
DECIDED ON: 20.10.2023

SUNNY @ SHANNI

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vishal Khatri, Advocate for
Mr. Vipul Jindal, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked for the 3rd time under Section 439 Cr.P.C., seeking regular to the petitioner in FIR No.62, dated 04.07.2019, under Sections 21 and 29 of NDPS Act, 1985, registered at Police Station STF Mohali.
2. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case and no recovery has been effected from his conscious possession. He further contends that the said recovery is made from the dash board of the car belonging to other co-accused namely Harjinder Singh, who has been granted the concession of regular bail by a co-ordinate Bench of this Court vide order dated 06.10.2023 passed in CRM-M-31493-2023 (Annexure P-6)).
3. Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. According to the custody certificate, the petitioner is behind the bars for the last 4 year, 3 months and 12 days. He further asserts that one

conscious possession of 40 grams of heroin. On his disclosure, it was revealed that the petitioner has proceeded to Tarn Taran from Mohali and was in possession of heroin. On having been apprehended, the petitioner and co-accused Harjinder were found to be in possession of 2 Kgs grams of heroin, which was recovered from the dash board of the car in which they were travelling.

4. Be that as it may, considering the custody undergone by the petitioner i.e., 4 years, 3 months and 12 days added with the fact that it is not a recovery from the petitioner rather petitioner was nominated on the basis of disclosure made by the co-accused, who stands admitted on regular bail.

5. Having regard to the orders passed by the Apex Court in various judgments that Section 37 of NDPS Act, 1985 would not be a bar wherein trial is being prolonged for an unreasonable time. It is abundantly clear that it will take certainly long time to conclude and detaining the petitioner behind the bars for an indefinite period would amount to violation of Article 21 of the Constitution of India and is against the principle “Bail is a rule, jail is an exception” as elucidated in the judgement of Apex Court in ***“Dataram Singh vs. State of Uttar Pradesh and another; (2018) 3 SCC 22”***.

6. In light of the 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.

7. The present petition is hereby allowed.

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

(SANDEEP MOUDGIL)
JUDGE

20.10.2023

Meenu

Whether speaking/reasoned Yes/No
Whether reportable Yes/No