

214 IN THE HIGH COURT OF PUNJAB AND HARYANA
 AT CHANDIGARH

CRM-M-1702-2024
Date of decision: 11.03.2024

VIKAS

...PETITIONER

V/S

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Laghuinder Singh Sekhon, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR J. (ORAL)

This is first petition filed under Section 439 of Code of Criminal Procedure praying for grant of concession of regular bail pending trial in case FIR No.27 dated 30.01.2020 registered under Sections 22-C of NDPS Act, 1985 at Police Station Nathu Sarai Chopta, District Sirsa.

2. The present FIR was lodged on the allegations that on 30.01.2020, the petitioner was allegedly found to be in possession of 2600 Nrx Tramadol Hydrochloride Diclofenac Sodium Dicylomine Hydrochloride Chlopherniramine Meleate tablets without any permit or licence in the area of Police Station Nathu Sarai Chopta.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner is behind the bars since 30.01.2020 and the prosecution has failed to conclude its evidence and further incarceration of the petitioner, without there being the prospect of the conclusion of the trial in the near future, would be violative of his rights to speedy trial enshrined under Article 21 of the Constitution of India. Culpability, if any, would be determined at the time of the trial. There are glaring loopholes in the case set up by the prosecution. The

Investigating Officer ASI Satnarayan is the complainant and he has not complied with the provisions of Section 50 of the NDPS Act, as no Gazetted Officer or Magistrate was called at the spot. In the absence of joining any independent witness makes the entire case of the prosecution doubtful and petitioner is involved in one more case under the NDPS Act, in which, he is already on bail.

4. Per contra, learned State counsel opposes the grant of regular bail to the petitioner on the ground that the petitioner is a habitual offender as he is involved in 04 more cases, out of which, one is under the NDPS Act and he is convicted in 07 other cases and the prosecution has already examined 09 witnesses, out of total 14 witnesses.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioner is behind the bars since 30.01.2020 and the prosecution has not been able to conclude the trial in spite of passing of almost 04 years. The culpability, if any, of the petitioner would be seen at the time of the trial.

6. The foundational concept of the criminal jurisprudence is to ensure speedy trial. Hon'ble the Supreme Court has repeatedly reiterated that right to speedy trial is enshrined in Article 21 of the Constitution of India. Speedy trial would cover investigation, enquiry, trial, appeal, revision and retrial etc. i.e. everything starting with the accusation against the accused and expiring with the final verdict of the last court.

7. It has further been held in law that if a person is deprived of his liberty under a procedure which is not reasonable, fair, or just, such deprivation would be violative of his fundamental right under Article 21 of the Constitution of India. The procedure so prescribed must ensure speedy trial for determination of the guilt of such person. Some amount of denial of personal

liberty cannot be avoided, but if the period of deprivation pending trial becomes excessively long, the fairness guaranteed by Article 21 of the Constitution of India would come into play and it would prevail over the embargo created by Section 37 of the NDPS Act.

8. In this regard, reference is being made to the law laid down by Hon'ble Supreme Court of India in the context of right to speedy trial under Article 21 of the Constitution of India on the following decision:- *Akhtari Bi Vs. State of M.P., (2001) 4 SCC 355, Surinder Singh Alias Shingara Singh vs. State of Punjab, (2005) SCC (Crl) 1674, P. Ramachandra Rao vs. State of Karnataka, (2202) 4 SCC 578, Babu Singh and others vs. State of U.P., (1978) 1 SCC 579, Takht Singh and others vs. State of M.P., (2001) 10 SCC 463; Special Leave to Appeal (Crl) No.2356 of 2010, Kushal Singh vs. State of U.P. (2JJ.) and Fazal vs. State of Uttar Pradesh, (2012) 5 SCC 752.*

9. Accordingly, the present petition is allowed. The petitioner-Vikas is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of the CJM/Duty Magistrate concerned.

10. The present petition seeking regular bail to the petitioner is allowed solely on the ground of long custody already undergone by him and without commenting on the merits of the case lest it may prejudice the outcome of the case pending before the trial Court.

11. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

March 11, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

- (i)

Whether speaking/reasoned

Yes/No
- (ii)

Whether reportable

Yes/No