

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-2717-2024
DECIDED ON: 24.01.2024

NIRMAL SINGH ALIAS MITHI
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. A.S. Brar, Advocate
for the petitioner.

Mr. Ramdeep Partap Singh, Sr. 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.243, dated 12.10.2022 (Annexure P-2), under Sections 15-61-85 of NDPS Act, 1985, registered at Police Station Dharamkot, District Moga.
2. Learned counsel for the petitioner contends that it is a case of false implication showing firstly 40 kgs of poppy husk being carried in two bags on an Activa/Scooter, which is highly improbable and during the investigation further just to enhance the quantum of contraband another recovery of 80 kgs of poppy husk has been fastened upon him and with that the total recovered contraband now comes to 120 kgs, which is commercial in nature and therefore, it is a case of high-handedness at the hands of police authorities, who are being vindictive on account of political rivalry.
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 01 year 03 months & 11 days and also fairly

concedes that the petitioner is not a habitual offender as there is no other case pending against him with the police authorities.

4. Considering the aforesaid submissions and in view of the fact that the petitioner is a first time offender and keeping in view the circumstances as elaborated above, the implication of the petitioner in the present case by the Investigating Agency of planted recovery cannot be ruled out and also the fact that challan stands presented on 03.03.2023; charges have been framed on 01.05.2023; out of total 14 prosecution witnesses, only 03 witnesses have been examined despite a lapse of eight months thereafter and the conclusion of the trial will take long time added with the fact that the petitioner is not a habitual offender.

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 a rule and jail is an exception*”.

6. 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.

7. In the afore-said terms, 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

24.01.2024

Poonam Negi

Whether speaking/reasoned Yes/No

Whether reportable Yes/No