

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

CRM-M No.3750 of 2024 (O&M)

Date of decision : 30.01.2024

Naresh Kumar @ Neshi

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. L.S.Sekhon, Advocate for the petitioner.

Mr. Iqbal Singh Mann, DAG, Punjab.

PANKAJ JAIN, J. (ORAL)

1 This petition has been filed under Section 439 Cr.P.C. for grant of regular bail in case F.I.R. No.99 dated 30.05.2023 registered under Sections 15 of NDPS Act (Section 18 of NDPS Act added later on) at Police Station Samana (Sadar Samana) District Patiala.

2 Learned counsel for the petitioner submits that the petitioner has been in custody since 30.05.2023. He further relies upon order dated 05.12.2023 passed in **CRM-M-58215 of 2023** whereby co-accused, namely, Kuldeep Singh @ Kiwa stands admitted to bail observing as under :-

“2 As per the contents of the FIR the petitioner was found to be in possession of 75 kg of poppy husk which he was carrying in Car bearing registration No.DL-12-C-6533.

3 Custody certificate dated 05.12.2023 has been filed. The same is taken on record.

4 Learned counsel for the petitioner submits that it is a clear case of false implication as the dates on special report under Section 42 of the NDPS Act and the rough site plan are totally at variance. On 23.11.2023 the following order was passed :-

“Learned counsel for the petitioner has referred to special

report under Section 42 of the NDPS Act dated 13.05.2023 in case FIR No.99 dated 30.05.2023 under Sections 15/61/85 of the NDPS Act registered at Police Station Sadar Samana as the subject. Apart from the aforesaid he has produced rough site plan which relates to the present case but is dated 30.05.2022. Referring to the afore-said documents he submits that it is a clear case of false implication.

Learned State counsel prays for time to file response.

Adjourned to 05.12.2023.”

5 *In pursuance thereto, reply by way of affidavit of Neha Aggarwal, PPS, Deputy Superintendent of Police, Sub Division, Samana District Patiala on behalf of respondent/State has been filed. The same is taken on record. The relevant para thereof is extracted herein below :-*

6. That the petitioner has mentioned in his petition, that in the report under Section 42 of the NDPS Act, at the bottom dated 13.05.2023 has been written, whereas on the top, date 30.05.2023 and in the main today 30.05.2023 has been recorded in this special report. Similarly, in the rough site plan at the bottom date has been written as 30-05-2022, whereas on the top the same has been correctly recorded dated 30-05-2023. In both these documents, the incorrect date has been written inadvertently or while doing copy paste, which is a clerical mistake. Whereas, in recovery memo dated 30-05-2023 (Annexure R-1) and arrest memo dated 30-05-2023(Annexure R-2), the date 30-05-2023 has been correctly recorded, meaning thereby the recovery of 75 Kgs poppy husk was recovered from the above noted car and both the accused were arrested on 30- 05-2023 alongwith 75 Kgs poppy husk as well as their car. So, the petitioner cannot take any undue advantage of the said documents due wrong mentioning of dates, which is a clerical mistake.”

6 *Counsel for the petitioner submits that once the case is admitted by the prosecution, it casts doubt upon whole of the story and definitely the petitioner is bound to annure benefit therefrom and thus chances of his conviction are bleak. He further submits that petitioner has also suffered actual incarceration for more than 6 months & 3 days and he has no criminal antecedents.*

7 *Learned State counsel on instructions from ASI Harwinder Singh, is not in a position to dispute the aforementioned factual*

assertions based on record.

8 *I have heard learned counsel for the parties and have gone through the records of the case.*

9 *Without commenting on the merits of the case and considering the incarceration suffered by the petitioner, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.*

10 *However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :-*

(i) The petitioner shall not mis-use the liberty granted.

(ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.

(iii) The petitioner shall not absent himself on any date before the trial.

(iv) The petitioner shall not commit any offence while on bail.

(v) The petitioner shall deposit his passport, if any with the trial Court.

(vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.

(vii) The petitioner shall not in any manner try to delay the trial.

11 *Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.”*

3 Custody certificate has been filed. The same is taken on record. As per the custody certificate, the petitioner has been in custody for 7 months and 29 days.

4 Learned State counsel is not in a position to dispute the aforementioned factual assertions based on record.

5 I have heard learned counsel for the parties and have gone through the records of the case.

6 Petitioner is a prior convict and as per the mandate of Section 37 of the 1985 Act repeated offence under the Act serves as a prime consideration to disentitle the applicant from grant of concession of bail. However, keeping in view the peculiar circumstances pointed out by the counsel for the petitioner and the admission of prosecution in their reply filed in bail application of co-accused *ibid*, this Court is of the opinion that case of the prosecution has come under cloud. Without further commenting on the merits of the case and considering the incarceration suffered by the petitioner, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :-

- (i) The petitioner shall not mis-use the liberty granted.*
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.*
- (iii) The petitioner shall not absent himself on any date before the trial.*
- (iv) The petitioner shall not commit any offence while on bail.*
- (v) The petitioner shall deposit his passport, if any with the trial Court.*
- (vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.*
- (vii) The petitioner shall not in any manner try to delay the trial.*

7 In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.

8 Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

30.01.2024
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No