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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.4654 of 2024
Date of decision : 23.7.2024

Bhupesh Kumar @ Happy	Petitioner
Versus	
State of Punjab	Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Deependra, Advocate and
Mr. Agam Bansal, Advocate, for the petitioner

Mr. Rajiv Verma, DAG, Punjab

SANDEEP MOUDGIL, J (ORAL)

This petition under section 439 Cr.P.C. has been filed for grant of regular bail to the petitioner in case FIR No.185 dated 9.7.2022, under Section 22 of the NDPS Act, 1985, registered at Police Station Tripri Patiala, District Patiala.

2. Learned counsel for the petitioner would contend that 1400 capsules of parvion spas containing salt Tramadol Hydrochloride, 240 capsules parvion spas plus containing salt Tramadol Hydrochloride and 500 tablets make Tramatrust SR 100 containing salt Tramadol Hydrochloride, are alleged to have been recovered from his possession with the prosecution story set henceforth that he threw a bag on seeing the police party. He further asserts that the police party admittedly has come in a private vehicle and is therefore, it is a chance recovery. Apart from



that, it is submitted on behalf of the petitioner that the details of that private vehicle has not been recorded in the police zimni and the case file, which tantamounts to grave irregularity vitiating the whole story of the prosecution.

3. Notice of motion.

4. Mr. Rajiv Verma, DAG, Punjab, has produced the copy of the custody certificate, which is taken on record. Copy of custody certificate has also been furnished to learned counsel for the petitioner, and seeks dismissal of the instant petition urging that it is a commercial quantity recovered from the petitioner who on seeing the police party out of fear threw the bag wherefrom the said contraband has been recovered. He would further assert that in the investigation the petitioner has been found guilty, and accordingly, challan was filed against him on 8.12.2022. On the basis of said final report, charges were framed against him.

5. Be that as it may, having regard to the fact that the petitioner has already incarcerated 2 years and 11 days in custody and not involved in any other case, as is clear from the custody certificate, this Court can easily infer that the petitioner is not a habitual offender, and therefore, probability of his false implication cannot be ruled out particularly in the light of the fact that police party was in a private vehicle, details of which have not been mentioned and this very fact has not been controverted by the learned State counsel, even before this Court at the time of consideration of instant petition.

6. The charges have been framed in this case on 13.2.2023, wherein out of 9 prosecution witnesses, only 2 have been examined so far,



meaning thereby the trial will take long time which tantamounts to violation of right to life and liberty as has been enshrined in Article 21 of the Constitution of India even including the right to speedy trial. In addition to that the principle “Bail is a rule, jail is an exception” is the basic principle of criminal jurisprudence which needs to be adhered to the trial moving slow, as elucidated in the judgment of Apex Court in **“Dataram Singh vs. State of Uttar Pradesh and another, (2018) 3 SCC 22”**.

7. Even further, right to speedy trial is a part of reasonable, fair and just procedure guaranteed under Article 21. This constitutional right cannot be denied to the accused as is the mandate of the Apex court in **“Hussainara Khatoon and ors (IV) v. Home Secretary, State of Bihar, Patna”, (1980) 1 SCC 98**; wherein it was held as under:

*“10. Directions given by this Court in **Hussainara Khatoon** (supra) to this effect were left to be implemented by the High Courts **Hussainara Khatoon and ors. (VII) etc. v. Home Secretary, Bihar and ors. etc. -(1995) 5 SCC 326 - para 2** are as follows :*

"2. Since this Court has already laid down the guidelines by orders passed from time to time in this writ petition and in subsequent orders passed in different cases since then, we do not consider it necessary to restate the guidelines periodically because the enforcement of the guidelines by the subordinate courts functioning in different States should now be the responsibility of the different High Courts to which they are subordinate. General orders for release of undertrials without reference to specific fact-situations in different cases may prove to be hazardous. While there can be no doubt that undertrial prisoners should not languish in jails on account of refusal to enlarge them on bail for want of their capacity to furnish bail with monetary obligations, these are matters which have to be dealt with on case-to-case basis keeping in mind the



guidelines laid down by this Court in the orders passed in this writ petition and in subsequent cases from time to time. Sympathy for the undertrials who are in jail for long terms on account of the pendency of cases has to be balanced having regard to the impact of crime, more particularly, serious crime, on society and these considerations have to be weighed having regard to the fact-situations in pending cases. While there can be no doubt that trials of those accused of crimes should be disposed of as early as possible, general orders in regard to judge strength of subordinate judiciary in each State must be attended to, and its functioning overseen, by the High Court of the State concerned. We share the sympathetic concern of the learned counsel for the petitioners that undertrials should not languish in jails for long spells merely on account of their inability to meet monetary obligations. We are, however, of the view that such monitoring can be done more effectively by the High Courts since it would be easy for that Court to collect and collate the statistical information in that behalf, apply the broad guidelines already issued and deal with the situation as it emerges from the status reports presented to it. The role of the High Court is to ensure that the guidelines issued by this Court are implemented in letter and spirit. We think it would suffice if we request the Chief Justices of the High Courts to undertake a review of such cases in their States and give appropriate directions where needed to ensure proper and effective implementation of the guidelines. Instead of repeating the general directions already issued, it would be sufficient to remind the High Courts to ensure expeditious disposal of cases...."
(emphasis added)

8. Moreover Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. The Apex Court in “**Abdul Rehman Antulay and others v. R.S. Nayak and another**”, **1992(2) RCR (Criminal) 634**, observed that Right to Speedy Trial

flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. And court also observed that the Right to Speedy Trial from the point of view of the accused are:

- I. The period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;*
- II. The worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and*
- III. Undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.*

9. With cumulative conclusion of the aforesaid discussion and circumstances, this Court allows the petition and directs the petitioner to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

10. 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

23.7.2024
Ashwani

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