

CRM-M-4531-2024 (O & M) ::1:-

(297) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-4531-2024 (O & M)
Date of Decision: 15.04.2024

Sukhdev Singh @ Shambu
... Petitioner

Versus

State of Punjab
...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

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

Mr. Mohit Saroha, AAG, Punjab.

JASJIT SINGH BEDI, J.

The prayer in this third petition under Section 439 Cr.P.C is for the grant of regular bail to the petitioner in case bearing FIR No.64 dated 26.05.2022 under Section 15 and 29 of the NDPS Act, 1985 registered at Police Station Sadar Sangrur, District Sangrur.

2. The brief facts of the case are that the house of one Reetha Singh @ Raghbir Singh was raided and the recovery of 100 kilos of poppy husk came to be effected from the premises. Reetha Singh @ Raghbir Singh was arrested. As per the prosecution case, the petitioner-Sukhdev Singh @ Shambu was named in the disclosure statement of the arrested accused.

3. The learned counsel for the petitioner contends that the case of the prosecution that the petitioner was named in the disclosure statement of

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the arrested accused-Reetha Singh @ Raghbir Singh is factually incorrect. In fact, a perusal of the report under Section 173(2) Cr.P.C. would show that no disclosure statement of Reetha Singh @ Raghbir Singh had been recorded inculcating the petitioner. There was only the recording of zimni No.1 which refers to the interrogation of Reetha Singh @ Raghbir Singh in which he is stated to have disclosed the name of the present petitioner. The said zimni has absolutely no evidentiary value in the eyes of law As the petitioner was in custody since the last more than one year but only 01 out of the 26 prosecution witnesses had been examined so far, the Trial of the present case was not likely to be concluded anytime soon and therefore, the petitioner was entitled to the concession of bail even though he was a serial offender having been convicted in two cases under the NDPS Act and was an undertrial in four other cases including the present case.

4. The learned counsel for the State has filed a reply dated 09.04.2024 which is taken on record. While referring to the said reply, he contends that the disclosure statement of Reetha Singh @ Raghbir Singh was recorded to the effect that the contraband recovered from him had been purchased from the present petitioner. Therefore, he was not entitled to the concession of bail, moreso, when he was a habitual offender with multiple cases under the NDPS Act having been registered against him. However, on examination of the report under Section 173(2) Cr.P.C., he fairly concedes that there is no disclosure statement of Reetha Singh @ Raghbir Singh in the report under Section 173(2) Cr.P.C. but only a zimni had been recorded to the

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effect that the disclosure statement of Reetha Singh @ Raghbir Singh had been recorded inculcating the present petitioner.

5. I have heard the learned counsel for the parties.

6. The contention raised by the learned counsel for the petitioner that there is no disclosure statement of Reetha Singh @ Raghbir Singh which is a part of the report under Section 173(2) Cr.P.C. has been admitted to be correct by the learned counsel for the State. In the absence of the said disclosure statement, the recording of a zimni would have very little relevance. Though, I am conscious of the fact that the petitioner is a habitual offender, in the instant case, it would be a matter of adjudication during Trial as to whether the evidence available against the petitioner would be sufficient to inculcate him. Even otherwise, the petitioner is stated to be in custody for more than one year and only 01 out of the 26 prosecution witnesses have been examined so far. Therefore, the Trial of the present case is not likely to be concluded anytime soon.

7. In this situation, the further incarceration of the petitioner is not required as a *prima facie* satisfaction under Section 37 of the NDPS Act can be recorded that the petitioner has not committed an offence and is not likely to commit one in future.

8. In view of the above, I find considerable merit in the present petition. Therefore, the present petition is allowed and the petitioner-Sukhdev Singh @ Shambu is ordered to be released on bail subject to his furnishing

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bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

9. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other case/crime other than the cases referred to in present petition.

10. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.2,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

11. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

April 15, 2024
sukhpreet

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No