

211 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-7787-2023 (O&M)

Date of Decision: 29.02.2024

JASDEV SINGH @ JASSA

...Petitioner

V/S

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Randeep Singh Warrich, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG Punjab.

HARPREET SINGH BRAR J. (Oral)

1. This is the second petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 141 dated 21.08.2022 registered under Sections 15 and 29 (added later on) of NDPS Act at Police Station Machhiwara Sahib, Police District Khanna, District Ludhiana. First petition was dismissed as withdrawn on 16.12.2022.

2. The present FIR was lodged on the basis of secret information that co-accused Bhagwan Singh and Pawan Singh @ Pamma are habitual of selling poppy husk on higher rates after bringing the same from other states. On 21.08.2022 also they were coming towards Machhiwara on truck no. PB-32-8844 and having huge quantity of poppy husk. If picket is installed, they can be apprehended. Believing the information to be true, ruqa was sent. Picket was installed. Accused were arrested and 4 quantal of poppy husk was recovered from them. Present accused/petitioner was nominated on the basis of statement of co-accused.

3. Learned counsel for the petitioner *inter alia* contends that the first petition seeking grant of regular bail to the petitioner was dismissed as withdrawn on 16.12.2022 and thereafter, the trial of the case has not made

much progress. Hence, the present petition has been filed. Learned counsel further contends that the petitioner is not named in the FIR and he has been nominated as accused in the present case only on the basis of disclosure statement made by co-accused Bhagwan Singh and Pawan Singh @ Pamma, while in police custody, which has no evidentiary value in the eyes of law as the same is hit by Section 27 of Indian Evidence Act and there is nothing on record to prove the conscious possession of the petitioner over the alleged contraband. Learned counsel relies upon the judgment of Hon'ble Apex Court passed in *Toofan Singh Vs. State of Tamil Nadu 2021(4) SCC 1*.

4. Per contra, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that he is a habitual offender and has already been convicted under the provisions of NDPS Act. As such he does not deserve the concession of regular bail and filed the custody certificate.

5. Having heard learned counsel for the parties and after perusing the custody certificate, it transpires that petitioner has been in custody for the last 1 year 03 months and 6 days as on 28.02.2024. The investigating agency has concluded the investigation and filed the final report under Section 173 of Cr.P.C. before the concerned Court. Trial of the case is progressing at snail's pace as out of 15 prosecution witnesses, only 1 has been fully examined and 03 witnesses have been partially examined. So further incarceration of the petitioner without there being the prospect of the conclusion of the trial in the near future, would be violative of Article 21 of the Constitution of India. Culpability, if any, would be determined at the time of the trial.

6. In view of the ratio of law laid down by Hon’ble Supreme Court in *Prabhakar Tiwari Vs. State of UP and Anr.* 2020(1) RCR (Criminal) 831 and *Maulana Mohd. Amir Rashadi Vs. State of U.P. and Others* 2012(2) SCC 382, the involvement of accused in other criminal cases cannot be the sole ground to deny him the concession of bail.
7. Accordingly, the present petition is allowed. The petitioner- Jasdev Singh @ Jassa is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.
8. 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.

29.02.2024

Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No