

217

2024:PHHC:028069

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8516-2024
DECIDED ON: 28.02.2024

GURDIT SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Gagandeep Singh Simble, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 439 Cr.P.C., seeking regular bail to the petitioner in FIR No.171, dated 07.10.2022, under Sections 22 and 29 of NDPS Act, 1985 (Section 31 of NDPS Act added later on), registered at Police Station City Nawashahar, District SBS Nagar.
2. Learned counsel for the petitioner contends that it is a pure case of false implication, since the petitioner was in the process of filing a case of prosecuting one Inspector Malkiat Singh, who is involved in such registration of fake cases and on an earlier occasion has also implicated the petitioner in case bearing FIR No.121 dated 04.10.2017 under Section 22 of NDPS Act, registered at Police Station Sadar SBS Nagar, in which he earned acquittal. It further asserted and much stress has been laid by the counsel for the petitioner on the fact of false implication in the present case at the hands of Inspector Malkiat Singh.

3. Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner has suffered incarceration of 1 year, 4 months and 19 days. Custody certificate further shows that in FIR No.77 dated 23.05.2016, he has already completed his sentence, FIR No.157 dated 02.06.2020, he has already undergone on 21.02.2022, FIR No.05 dated 20.01.2021, he has been discharged and in FIR No.121 dated 04.10.2017, he has already been acquitted on 21.10.2021.

4. In addition to that it is argued on behalf of the petitioner that recovery of 70 injections of *buprenorphine* and 30 injections of *avil* were effected from the dashboard of the car in which the petitioner was travelling alongwith co-accused Harpreet Kaur, who has been granted the concession of regular bail by this Court vide order dated 25.01.2024 (Annexure P-2) passed in CRM-M-62141-2023.

5. Heard, learned counsel for respective parties.

6. Be that as it may, looking into the factual aspects as discussed hereinabove added with the fact that the petitioner has suffered incarceration of 1 year, 4 months and 19 days, wherein false implication cannot be ruled out, in view of the submissions, as is evident from the judgment dated 25.05.2022 (Annexure P-3), which reads as under:-

“Even it is noticed that it was one man show of Inspector Malkiat Singh, who acted as complainant, Investigation Officer of the case and the SHO in this case and never reported the matter to the higher police officer to change him as Investigating Officer or the SHO. If document mark D1 to D4 are seen, it proves the fact that the vehicles of the police party alongwith vehicle of the accused i.e. Ertiga bearing No.PB32-Z- 6587 are moving in the area of Guru Nanak Nagar, SBS Nagar at 3.09 PM. If the document Ex.DX is seen, the vehicle bearing No. PB08-W-4565 and PB32- S-1313 belong to the police party and were parked in P.S.Aur. Ld. counsel for the accused has cited authority

Suresh Kumar Vs. Union of India 2015 (3). RCR (Criminal) 340, Supreme Court of India, where in it has been held as:-

A. Accused can be allowed to summon call record of mobile telephones of concerned police officers to show that police were not near the location of recovery but were at some other location.

On Facts

Electronic Record- Recovery of heroin from accused- Prosecution version that recovery was effected near bus stand -Contention of accused that police officers were not at the Bus Stand at relevant time but were at some other location- Application of accused to summon the mobile for determining the location of the officers concerned- Trial Court directed to summon from the companies concerned call details of telephones of the concerned police Officers.

B. Evidence Act, 1872- Sections 65A and 65B Electronic record- Electronic records are admissible in evidence in criminal trials- Sections 65A and 65B of Evidence Act make such records admissible subject to fulfillment of the requirements stipulated therein which includes a certificate in terms of Section B(4).

*Ld. counsel for the accused has also cited authority **Sandeep Kumar Vs. State of Punjab, 2019(4) R.C.R. (CrI) 741**, Punjab and Haryana High Court wherein it has been held as under:*

Narcotic Drugs and Psychotropic Substance Act, 1985 Section 22 and 50 Conviction-Appeal- Investigating Officer offered search of the appellant himself by additionally informing him that he has a right to be searched before a Gazetted Officer or Magistrate, which is not legal-Signatures of the appellant were not obtained on recovery memo- Details of FIR mentioned on documents prepared prior to registration of FIR- No reference of form No.29-Magistrate has not followed the property procedure by tallying with the seals with the sample seal chit, as it was never produced before him- No attempt to join any independent witness- Accused was denied the right of fair investigation, as no second Investigation Officer was called at the spot- Conviction and Sentence set aside.

*Ld. counsel for the accused has also cited authority **Smt. Manorama Devi Vs. State of Haryana 2018(2) R.C.R. (CrI) 339**, Punjab and Haryana High Court wherein it has been held as under:*

B. Criminal Procedure Code 1973 Section 154 Registration of FIR subsequent to recovery- If in recovery memo, FIR number is mentioned which was admittedly registered subsequent to effecting recovery, prosecution case becomes highly doubtful- Held, prior to sending information for registration of case, recovery memo was also prepared at spot -However, FIR with complete details mention in recovery memo, doubtful to be prepared at spot.

29. If this authorities referred by Ld. defence counsel are seen, the signatures of the accused was on recovery memo. The offence U/S 22 of the NDPS Act has been recorded on the documents prepared by the police officials even before registration of the FIR, which casts shadow of doubt about the prosecution story. Similarly, the call details of the police officials as stated above show that these police officials were not present at the spot at the time of alleged recovery. Even the time mentioned on the documents not supporting the prosecution story. Rather, the perusal of the cross-examination of the prosecution witnesses alongwith defence witnesses examined by the accused shows that the accused has been falsely implicated in the present case. Accordingly, points No.1 to 3 of determination are decided against the prosecution and in favour of the accused.

30. In view of my finding on above points, this court is of the opinion that the prosecution is unable to connect the accused with the crime. Hence, accused Gurdit Singh is acquitted of the charge framed under Section 22 of the NDPS Act. The case property is ordered to be destroyed after the expiry of period of appeal or revision, if any. File be consigned to the record room”.

7. Apart from the aforesaid factual aspects, this Court cannot shut its eyes to the fact that conclusion of trial shall take sufficient time, as after framing of charges on 05.05.2023, only 3 prosecution witnesses have been examined so far out of total 13.

8. In the light of above, no useful purpose would be served by keeping the petitioner behind bars for an uncertain period, which would amount 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*”, as has been time and again discussed by this Court, while relying upon the judgment of the Apex Court passed in *Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131*.

9. Hence, 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.

10. The present petition is hereby allowed.

11. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

28.02.2024

Meenu

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>