

CRM-M-12346-2024
Date of decision: 14.03.2024

Karan alias NoniPetitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Harjinder Singh, Advocate with
Mr. Jashan Singh Brar, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.92 dated 04.05.2021 registered under Section 22 of the NDPS Act, 1985 registered at Police Station Rama Mandi, District Police Commissionerate, Jalandhar (Annexure P-1).

The present FIR has been registered on the allegation that on 04.05.2021, the police party was present in the area of Damoria Pull, Qazi Mandi Road, Jalandhar, in a private vehicle for intercepting anti social elements. In the meantime, one person was seen coming from the Qazi Mandi side carrying a bag on his back. On seeing police party, he became perplexed and tried to slip away who was apprehended by the police party and on inquiry, he disclosed his name as Karan @ Noni (the petitioner herein). Thereafter, the

CRM-M-12346-2024

-2-

search was conducted and 20 injections marked Pheniramine Maleate Avil, 10 ml Vial Intramuscular inject and 20 injections of Buprenorphine I.P. Rexogesic 2 ml Ampoule were recovered from his bag. The contraband recovered from the possession of the accused were taken into possession and FIR (*supra*) was registered.

Learned counsel for the petitioner *inter alia* contends that the provision of Section 50 of the NDPS Act is not followed which is mandatory in nature and the petitioner is behind the bars since the date of his arrest i.e. 04.05.2021 and more than 02 years and 10 months have been passed but prosecution has failed to concluded the prosecution evidence. He further submits that it clearly infringes the right of the petitioner under Article 21 of the Constitution of India which ensures speedy trial.

Per contra, the learned State counsel submits that the contraband recovered from the conscious possession of the petitioner falls under the ambit of commercial quantity. Further, he could not controvert the fact that the petitioner is not involved in any other case under the NDPS Act.

A two Judge Bench of Hon'ble Supreme Court in '***Satender Kumar Antil v. CBI***' (2022) 10 SCC 51, with respect to prevailing conditions of undertrial prisoner in India has observed:

“6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable

CRM-M-12346-2024

-3-

for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 04.05.2021 and the trial of the case has not even reached halfway mark as only 02 out of 08 prosecution witnesses have been examined so far. The culpability, if any, would be determined at the time of trial. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

The foundational concept of the criminal jurisprudence is to ensure speedy trial. The Hon'ble Supreme Court has repeatedly reiterated that right to speedy trial is enshrined in Article 21 of the Constitution of India. Speedy trial would cover investigation, enquiry, trial, appeal, revision and retrial etc. i.e. everything starting with the accusation against the accused and expiring with the final verdict of the last Court.

It has further been held in law that if a person is deprived of his liberty under a procedure which is not reasonable, fair, or just, such deprivation

CRM-M-12346-2024**-4-**

would be violative of his fundamental right under Article 21 of the Constitution of India. The procedure so prescribed must ensure speedy trial for determination of the guilt of such person. Some amount of denial of personal liberty cannot be avoided, but if the period of deprivation pending trial becomes excessively long, the fairness guaranteed by Article 21 of the Constitution of India would come into play.

In this regard, reference is being made to the law laid down by the Hon'ble Supreme Court in the context of right to speedy trial under Article 21 of the Constitution of India on the following decision:- **Akhtari Bi Vs. State of M.P., (2001) 4 SCC 355, Surinder Singh Alias Shingara Singh vs. State of Punjab, (2005) SCC (Crl) 1674, P. Ramachandra Rao vs. State of Karnataka, (2002) 4 SCC 578, Babu Singh and others vs. State of U.P., (1978) 1 SCC 579, Takht Singh and others vs. State of M.P., (2001) 10 SCC 463; Special Leave to Appeal (Crl) No.2356 of 2010, Kushal Singh vs. State of U.P. (2JJ.) and Fazal vs. State of Uttar Pradesh, (2012) 5 SCC 752.**Ergo, I am inclined to allow the prayer of the petitioner.

Accordingly, the present petition is allowed. The petitioner-Karan @ Noni is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of the concerned Illaqa Magistrate/Trial Court/Duty Magistrate.

The present petition seeking regular bail to the petitioner is allowed solely on the ground of long custody already undergone by him and without commenting on the merits of the case lest it may prejudice the outcome of the case pending before the trial Court.

CRM-M-12346-2024

-5-

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.

(HARPREET SINGH BRAR)
JUDGE

14.03.2024
Neha

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