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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-13879-2023
Decided on : 28.08.2024

Gulshan Kumar @ Rinku
... Petitioner

Versus

State of Punjab
... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present : Mr. A.S. Sekhon, Advocate
for the petitioner

Mr. Vinay Kumar, DAG Punjab

KIRTI SINGH, J. (Oral)

The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked for grant of regular bail to the petitioner in case FIR No.30 dated 09.02.2020 registered under Sections 22/25/61/85 of the Narcotics Drugs and Psychotropic Substances Act, 1985 at Police Station Sadar Jagraon, District Ludhiana.

2. The facts in brief are that the police party headed by SI Baldev Singh conducted nakabandi where the petitioner and co-accused came at the spot on motor cycle bearing No. PB-04-W-6405, the petitioner-Gulshan Kumar @ Rinku was sitting on the rear seat of the motor cycle and Jaspal Singh @ Pal was driving the motor cycle. SI Baldev Singh introduced himself to the petitioner and co-accused and apprised them about their legal right to get their search conducted in the present of Magistrate/Gazetted Officer by him. As per the search conducted,

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recovery of 1000 tablets of Clovidol-100 SR containing salt Tramadol Hydrochloride was made from the petitioner.

3. Learned counsel for the petitioner *inter alia* submits that the petitioner has been falsely implicated in the present case and the recovery was effected from both the accused from separate carry bags, however, despite that a joint recovery memo was prepared by the concerned officer. He further submits that there are two more cases registered against the petitioner, however, he is on bail in both the cases. Learned counsel further submits that the petitioner has already undergone an actual custody of 01 year, 02 months and 12 days.

4. Per contra, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. As per the custody certificate, the petitioner has undergone actual custody of 01 year, 02 months and 12 days. He further submits that there are two more cases registered against the petitioner, however, he is on bail in both the cases. He further submits that the challan in the present case was presented on 09.04.2020, charges were framed on 06.04.2024 and out of 12 prosecution witnesses, one prosecution witness has been examined till date. The next date of hearing before the trial Court is 09.09.2024. He, however, submits that there are serious allegations against the petitioner, therefore, he is not entitled to the concession of regular bail.

5. Heard the rival submissions made by learned counsel for the parties.

6. As per the status report, it has been stated that SI Baldev Singh Investigating Officer had prepared one joint recovery memo of the recovered tablets from the petitioner and co-accused. The Investigating Officer SI Baldev Singh negligently failed to write down the fact that the envelope was in the

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@Pal was driving the motor cycle. The Investigating Officer had performed his duty negligently for preparing one joint recovery memo of the tablets of the petitioner and co-accused. The enquiry Officer recommended to initiate departmental enquiry against Retd. SI Baldev Singh who was Investigating Officer of this case.

7. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. Admittedly, charges have been framed on 06.04.2024 and out of 12 prosecution witnesses, only one has been examined till date. The petitioner has undergone actual custody of 01 year, 02 months and 12 days and there are two more cases registered against him, in which he is on bail in both the cases.

8. As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as “Baljinder Singh alias Rock vs. State of Punjab” decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would land the petitioner in a situation of denial of the concession of bail.

9. It would be unjust to keep him behind bars looking at the condition of the jails which are not conducive for rehabilitation process and detaining the



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accused persons in jails would also tantamounts to violation of Article 21 of the Constitution of India including the right to speedy trial, and is against the principle “Bail is a rule, jail is an exception” as elucidated in the judgment of Apex Court in **“Dataram Singh vs. State of Uttar Pradesh and another, (2018) 3 SCC 22”**.

10. 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.

11. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and order dated 11.09.2023 is made absolute. The petitioner shall also abide by the following conditions:-

- (i) The petitioner will not tamper with the evidence during the trial.
- (ii) The petitioner will not pressurize/intimidate the prosecution witness(s).
- (iii) The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
- (iv) The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.
- (v) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts



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of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

12. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

13. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

28.08.2024
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(KIRTI SINGH)
JUDGE

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