

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

212 CRM-M-13793-2024
Date of decision: 30.04.2024

Inderjit Singh @ Gandhi ... Petitioner

VS.

State of Punjab ... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Yajur Sharma, Advocate for the petitioner

Mr. Rajiv Verma, DAG Punjab

Sandeep Moudgil, J.

The petitioner seeks regular bail in case FIR No.64 dated 02.06.2023 under Sections 25(6) and 25(7) of the Arms Act (Sections 21 & 29 of NDPS Act added later on) registered at Police Station Khilchian, District Amristar Rural.

Learned counsel for the petitioner contended that it is a case of no injury as the alleged weapon recovered from the petitioner i.e. .32 bore pistol along with 4 live cartridges (.30 bore) had been purchased by him from an unknown person in Kanpur, UP and the same was not used to cause harm to anybody and as such, the FIR is an abuse of process of law. He submits that the alleged recovery is subsequent to the confessional statement of the petitioner during custody wherein a recovery of 260 grams of heroin has been planted on him which is marginally over and above the commercial quantity. It is also submitted that Section 50 of the NDPS Act was not complied with as the alleged search was not carried out in presence of a Gazetted Officer or Magistrate.

Learned State counsel has produced custody certificate dated 29.04.2024, which is taken on record. According to the said custody certificate,

the petitioner has undergone 10 months and 29 days of custody so far. He opposed the concession of bail to the petitioner highlighting the number of other cases in which he is otherwise involved and also strenuously referred to the recovery of 260 gms of heroin and on that account, the custody period undergone by the petitioner is also on the lower side.

Heard learned counsel for the parties and gone through the record.

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 lend the petitioner in a situation of denial the concession of bail.

As regards recovery of 260 gms of heroin, the same is on the basis of confessional statement and this fact is not disputed by learned State counsel. The manner in which the said contraband is reflected to have been recovered, raises suspicion on the alleged recovery though the same may be established by the prosecution during the course of trial wherein challan stands filed, investigation is complete and charges are yet to be framed and 16 PWs have been cited by the prosecution and for that reason the petitioner cannot be put

behind the bars for an indefinite period particularly in the light of the fact where the false implantation of alleged recovery of contraband upon the petitioner cannot be ruled at this stage, which might have been added just to enhance the gravity of the offence wherein at the initial stage only .32 bore pistol and 4 live cartridges were shown to have been recovered from the petitioner.

Taking into consideration the totality of the circumstances particularly the fact that trial in the present case is moving at a snail's pace as is evident from the statement of State counsel that out of 16 witnesses, none have been examined so far and in that eventuality, it is abundantly clear that it will take certainly long time to conclude and detaining the petitioner behind the bars for an indefinite period would amount to violation of Article 21 of the Constitution of India and is against the principle "Bail is a rule, jail is an exception" as elucidated in the judgement of Apex Court in "***Dataram Singh vs. State of Uttar Pradesh and another;***, (2018) 3 SCC 22".

A Division Bench of this High Court in ***Rajender Singh vs. State of Haryana, 2022(2) R.C.R. (Criminal) 85*** has held that a right under Article 21 of the Constitution of India includes right to speedy trial and expeditious disposal which is also in public interest primarily showing concern on a following view point.

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

Keeping the petitioner inside the jail is clearly violative of speedy trial under Article 21 of the Constitution of India, but the same is likely to take long time being wherein it is at the initial stage after a lapse of considerable time.

Accordingly, the present petition is allowed and 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.

30.04.2024
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No