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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-16540-2024

Date of decision: 28.11.2024

Shamshad alias Mama Pancher

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Sandeep Kumar Passi, Advocate
for the petitioner.

Mr. Subhash Godara, Addl.A.G., Punjab.

HARPREET SINGH BRAR, J. (ORAL)

This second petition has been filed under Section 439 of Cr.P.C. seeking regular bail in case bearing FIR No.211 dated 09.10.2022 under Section 21 of the NDPS Act and Sections 22/29 of the NDPS Act added later on, registered at Police Station City 1 Malerkotla, District Malerkotla, Punjab (Annexure P-1). The first petition was dismissed as withdrawn on 07.02.2024.

The present FIR was registered on the allegations that on 09.10.2022, co-accused, namely, Mohd. Aamir @ Bawa and Shamshad @ Mama Pancher (the petitioner herein) were apprehended by the police party along with Swift Dzire car bearing registration No.DL-2CAP-1969 and from the polythene bag held by the petitioner, recovery of 100 grams of heroin along with drug money amounting to Rs.33,000/- was effected. During investigation, on 14.10.2022, on the basis of disclosure statement made by the petitioner and co-accused, 12 intoxicant vials of Corex were recovered. The petitioner and co-accused further disclosed that they had purchased 115 grams of heroin @ Rs.1,200/- per gram and 102 strips containing 1020 intoxicant tablets @

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Rs.200/- per strip from another co-accused Tanvir Ahmed, who was nominated under Section 29 of NDPS Act being supplier of the contraband.

Learned counsel for the petitioner *inter alia* contends that FIR (*supra*) was registered on 09.10.2022 and the contraband was planted upon the petitioner. There is total non-compliance of the mandate of NDPS Act, which violates the fundamental right of the petitioner to fair investigation/trial. Initially, FIR (*supra*) was registered under Section 21 of NDPS Act, but after 05 days, commercial quantity of intoxicant vials of Corex has been planted on the petitioner. Further, the petitioner is behind bars since 16.10.2022 and after passing of more than 02 years, trial of the case has not made any progress and only 02 prosecution witnesses have been examined so far. The delay in trial is not attributable to the petitioner, as he is in judicial custody and the same has suffocated his fundamental right as provided under Article 21 of the Constitution of India. He further submits that identically placed co-accused, namely, Mohd. Aamir @ Bawa was granted the concession of regular bail by this Court vide order dated 24.10.2024 passed in CRM-M-51667-2024 (O&M) titled as 'Mohd. Aamir @ Bawa Vs. State of Punjab'.

Per contra, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that commercial quantity of contraband was recovered from the petitioner, as such, he is not entitled to the relief of regular bail. Learned State counsel produces the custody certificate dated 27.11.2024 in the Court today, which is taken on record. He submits that the petitioner is habitual offender and is involved in three more cases under NDPS Act.

Having heard learned counsel for the parties and after perusing the

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record of the case with their able assistance, it transpires that the petitioner is in custody for the last 02 years 01 month and 11 days as on 27.11.2024 and the trial of the case will take long time in its conclusion, as only 06 out of 24 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 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***



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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.

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

“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 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 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.”

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.

In view of the above, present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, petitioner, namely, Shamshad @ Mama Pancher, is ordered to be

released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of learned Illaqa Magistrate/trial Court concerned.

Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and learned trial Court shall proceed without being prejudiced by the observations of this Court.

(HARPREET SINGH BRAR)

JUDGE

28.11.2024

Neha

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No