

DATE OF DECISION: 21.05.2024

...PETITIONER

Versus

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Mr. B.S.Virk, Sr. DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked for the grant of regular bail to the petitioner in FIR No. 350, dated 06.05.2023, under Sections 21-C/27-A and 29 of The Narcotic Drugs and Psychotropic Substances Act, 1985, and Section 201 IPC registered at Police Station City Yamunanagar.

2. Learned counsel for the petitioner contends that no recovery has been effected from the possession of the petitioner and it was co-accused namely Haseeb Khan from whom 350 grams of Heroin was recovered. He further asserts that the petitioner was nominated as an accused on the basis of disclosure statement of main accused Haseeb Khan who has been granted default bail under Section 167(2) Cr.P.C. vide order dated 08.11.2023 and only thereafter, the petitioner was nominated as an



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accused in the present FIR and arrested on 18.11.2023 despite having no incriminating material against him.

3. Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for last 5 months and 28 days. He has opposed the prayer made in the present petition stating that the petitioner is involved in one more FIR i.e. FIR No. 433/2020 under Section 22 of the NDPS Act registered at P.S. Katra, Shahjahanpur. He further asserts that as per the disclosure statement of the main accused, the petitioner is the supplier from whom the main accused has purchased the recovered contraband and during the investigation, it was found that the petitioner and main accused were in contact with each other consistently.

4. Be that as it may, keeping in view the facts that the main accused from whom recovery was effected has been granted benefit of default bail, investigation is complete and challan stands presented on 28.02.2024, the custodial interrogation of the petitioner would be futile who is already in custody for almost six months as is evident from the custody certificate. As per the principle of the criminal jurisprudence, no one should be considered as guilty till the guilt is proved beyond reasonable doubt, whereas in the instant case, trial is prolonged and likely to take long time in the light of the fact that charges are yet to be framed and 22 prosecution witnesses are cited by the prosecution which will certainly take time to be examined and detaining the petitioner behind the bars for an indefinite period would amount to violation of



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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***”.

5. 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.

6. In view of the aforesaid discussions made hereinabove, 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.

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

8. Petition stands allowed.

(SANDEEP MOUDGIL)
JUDGE

21.05.2024
anuradha

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