

Date of Decision : 15-05-2024

.....Petitioner

.....Respondent

1. Prayer in the petition is for regular bail in FIR No. 67 dated 04.06.2021 registered for offences punishable under Sections 21 and 29 of the NDPS Act, 1985 at Police Station Sadar Sangrur District Sangrur.
2. Allegations against the petitioner is of having 256 gms of intoxicant powder which was recovered from his conscious possession while carrying the same in a polythene bag.
3. It is asserted on behalf of the petitioner that he was released on interim bail on account of non-production of chemical report but thereafter on 24.12.2021 he was taken in judicial custody.

4. It is a prosecution case alleging false implication on the fact that as per the story put forth in the FIR, intoxicant powder was being carried in transparent polythene which was thrown away after the petitioner took it out from his right pocket.

5. Counsel for the petitioner submits that trial in the present case is proceeding at a snail's pace and none of the prosecution witnesses have been examined till date and the challan stands presented on 23.11.2021 and the charges stand framed on 24.12.2021.

6. Mr. J.S. Rattu, DAG Punjab appears and accepts notice on behalf of the respondent-State and files custody certificate, which is taken on record and the copy of the same has been supplied to the counsel for the petitioner.

7. On perusal of the custody certificate, the period of custody shown in the instant case at Serial No. 10 in the Column of reflects it as "zero" which seems to be wrongly recorded in the light of the factual aspects detailed in the Serial No.1 showing the period of custody in the instant case from 09.06.2021 to 05.08.2021 and thereafter again on 24.12.2021 to 15.07.2022 and from 19.07.2022 to till date, which comes to be a period of custody of more than 2 years and 6 months.

8. As far as the pendency of the case is concerned, counsel for the petitioner refers to FIR No.236 dated 13.12.2019, in which the petitioner was convicted for a period of 2 months for the offences punishable under Section 25 and 21(B) of the NDPS Act but has thereafter already undergone sentence vide order dated 15.07.2022 passed by Judge Special Court, Sangrur. While in other cases, the petitioner has completed the sentence including FIR No.190 dated 12.12.2022 under Section 52-A of the Prisons Act.

9. He thereafter controverts the report submitted in the custody certificate regarding FIR No.147 dated 10.11.2021 with Police Station Sadar, Sangrur registered for offences punishable under Sections 21, 22, 61 and 85 of the NDPS Act.

10. Counsel for the petitioner while producing order dated 16.11.2023 asserts that the petitioner has been granted concession of regular bail by the trial Court itself. Copy of the said order be is taken on record as Mark "A".

11. Looking into the totality of facts as discussed hereinabove and the submissions made by learned counsel for the respective parties, this Court is of the firm view that trial will take a long time as is evident from fact that not even a single witness out of the 15 cited witnesses has been examined yet and for that the petitioner cannot be detained behind the bars for an indefinite period.

12. This Court is sanguine of the fact that according to the proposition settled by the Apex Court in ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131***, that keeping somebody behind the bars, till his guilt is proved, for an indefinite period amounts to infringement of his right to life and liberty, as enshrined under Article 21 of Constitution of India and is against the principle "*bail is a rule*" and "*jail is an exception*".

13. 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.

14. Apart from that, basic fundamental criminal jurisprudence is also to be borne in mind while granting bail to the petitioner in the instant case in hand, trial is likely to take long time wherein the quantity of contraband recovered from the petitioner is over and above the commercial quantity. Hence, the petitioner deserves the concession of regular bail, at this stage. Considering the aforesaid discussion, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, concerned.

15. The present petition is, hereby, allowed.

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

15-05-2024
spn

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No