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In the High Court of Punjab and Haryana at Chandigarh

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CRM-M-22405-2024 (O & M)
Date of Decision: August 01, 2024**PATTRICK ANIYASOR ALIAS PAIRTHIK****....PETITIONER****VERSUS****STATE OF PUNJAB****....RESPONDENT****CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present: Mr. Tarun Singhal, Advocate for the petitioner.

Mr. Adeshwar Singh Pannu, AAG, Punjab.

JASGURPREET SINGH PURI, J (ORAL)

1. The present is a second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No. 207 dated 16.08.2021, under Sections 21(b), 21(c) and 29 of the NDPS Act, registered at Police Station City Tarn Taran, District Tarn Taran, Punjab.

2. Learned counsel for the petitioner has submitted that the petitioner is a foreign national and is in custody for over 02 years and 11 months. He submitted that the petitioner is not involved in any other case. He further submitted that as per the FIR, the police had set up a 'naka' and they had apprehended one co-accused namely, Satwant Singh from whom a recovery of 225 grams of heroin was made and it was on his disclosure statement that name



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of the petitioner was nominated and as per the police, there was a recovery of 410 grams of heroin from the petitioner on his own disclosure statement. He submitted that the trial of the case is not progressing and till date only 06 prosecution witnesses have been examined out of total cited 18 prosecution witnesses and charges in the present case were framed on 05.05.2023, which is more than one year ago. He also submitted that name of the petitioner was nominated on the disclosure statement of the co-accused and there is nothing on record to connect the petitioner in the present case except the disclosure statement of the co-accused. He referred to a judgment passed by Hon'ble Supreme Court in **Tofan Singh versus State of Tamil Nadu, 2021 (4) SCC 1** to contend that it is a settled law that the disclosure statement of a co-accused is not admissible in evidence and therefore, on that ground as well the petitioner is entitled for the grant of regular bail. He also submitted that insofar as the aforesaid alleged recovery of 410 grams of heroin stated to be recovered from the petitioner is concerned, the same was planted upon the petitioner while the petitioner was in custody. He also submitted that in view of the long custody of the petitioner and the trial is not progressing, the petitioner may be considered for the grant of regular bail. He has referred to judgments of the Hon'ble Supreme Court in **Satender Kumar Antil versus Central Bureau of Investigation and another, [2022 (10) SCC 51]**, "**Mohd. Muslim @ Hussain versus State (NCT of Delhi)**", 2023 AIR (SC) 1648, "**Dheeraj Kumar Shukla versus The State of Uttar Pradesh**", 2023 SCC Online SC 918 and "**Rabi Prakash versus The State of Odisha**", Special Leave to Appeal (Criminal) No.4169 of 2023 and submitted that the right of speedy trial has been jeopardized in the present case. Learned counsel for the petitioner has also

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specifically stated that the petitioner is a foreign national and the passport of the petitioner is with him and he undertakes to deposit the same with the trial Court in case the bail is granted to him.

3. On the other hand, learned State counsel upon instructions from ASI Lakhwinder Singh submitted that he has also sought instructions from the officer that the passport is not with the police and the same is with the petitioner. He submitted that insofar as the role of the petitioner is concerned, he was nominated on the basis of disclosure statement of the co-accused and after his arrest, recovery of 410 grams of heroin was effected from him under Section 27 of the Indian Evidence Act. He further submitted that insofar as aforesaid co-accused namely Satwant Singh is concerned, he has been released on regular bail by the Coordinate Bench of this Court and in the present FIR only the present petitioner is in custody. Insofar as the antecedents of the petitioner is concerned, he submitted that the petitioner is not involved in any other case.

4. I have heard learned counsel for the parties.

5. It is a case where the petitioner is a foreign national and is facing incarceration for over 02 years and 11 months. As per the learned counsel for the parties, charges were framed on 05.05.2023 and only 06 witnesses have been examined out of total cited 18 prosecution witnesses. As per the learned counsel for the respondent-State, the other co-accused, namely, Satwant Singh, who was initially arrested with heroin, has already been extended the benefit of bail by the Coordinate Bench of this Court. The petitioner is not involved in any other case.



6. So far as the stage of the trial is concerned, the petitioner definitely deserves the concession of regular bail. However, since the petitioner is a foreign national and is at a flight risk, some condition is required to be imposed upon him in this regard. Since the trial of the case is not progressing, which resulted in long incarceration of the petitioner. The case of the petitioner would also be considered in the light of Article 21 of the Constitution of India and also in the light of the aforesaid judgment of Hon'ble Supreme Court in Satender Kumar Antil's case (supra), the relevant para of the aforesaid judgment is reproduced as under:-

“49. Sub-section (1) mandates courts to continue the proceedings on a day-to-day basis till the completion of the evidence. Therefore, once a trial starts, it should reach the logical end. Various directions have been issued by this Court not to give unnecessary adjournments resulting in the witnesses being won over. However, the non-compliance of Section 309 continues with gay abandon. Perhaps courts alone cannot be faulted as there are multiple reasons that lead to such adjournments. Though the section makes adjournments and that too not for a longer time period as an exception, they become the norm. We are touching upon this provision only to show that any delay on the part of the court or the prosecution would certainly violate Article 21. This is more so when the accused person is under incarceration. This provision must be applied inuring to the benefit of the accused while considering the application for bail. Whatever may be the nature of the offence, a prolonged trial, appeal or a revision against an accused or a convict under custody or incarceration, would be violative of Article 21. While the courts will have to endeavour to complete at least the recording of the evidence of the private witnesses,



as indicated by this Court on quite a few occasions, they shall make sure that the accused does not suffer for the delay occasioned due to no fault of his own”

7. In view of the above considering the totality of the facts and circumstances, custody of the petitioner and the stage of the trial, the present petition is allowed. The petitioner shall be released on regular bail, if not required in any other case, subject to furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

8. **However, learned trial Court while imposing conditions upon the petitioner shall also impose specific condition upon the petitioner that he will surrender his passport to the trial Court. Only on surrendering of his passport, he shall be released on regular bail.**

9. However, anything observed hereinabove shall not be treated as an expression of opinion on the merits of the case and is meant for the purpose of deciding the present petition only.

(JASGURPREET SINGH PURI)
JUDGE

August 01, 2024
A.Kaundal

Whether speaking/ reasoned :
Whether Reportable :

Yes/No
Yes/No