

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-22877-2024
DECIDED ON: 13.05.2024

ISHMAEL @ SMILE

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Amit Dhawan, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.26, dated 17.02.2024 (Annexure P-1), under Sections 379-B, 411 IPC (Section 473 IPC added later on), registered at Police Station Shahkot, District Jalandhar.
2. Learned counsel for the petitioner contends that there is an unexplained delay of 21 days in lodging the instant FIR and in addition to that, vehemently contends that it is a case of no injury since there is no medical opinion to support the alleged injuries given by *datar*, which is being falsely attributed to the present petitioner.
3. On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He does not controvert the fact that there is no medical evidence qua the alleged injury given with back side of *datar* on the head of the complainant

except the bald statement of complainant as narrated in the FIR. He seeks dismissal of the instant petition urging that the petitioner is involved in one more case, meaning thereby he is a habitual offender.

4. Be that as it may, having gone through the submissions made by the respective parties and considering the custody period i.e. 02 months and 22 days, for which the petitioner has suffered incarceration and the fact that investigation is complete; challan stands presented on 15.04.2024; charges are yet to be framed and 10 prosecution witnesses are to be examined , which is sufficient enough for this Court to infer that the conclusion of trial will take a long time for which the petitioner cannot be detained behind the bars.

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 concession of bail.

6. In the light of above facts, 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*”.

7. Therefore, 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.

8. In the afore-said terms, the present petition is hereby allowed.

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

(SANDEEP MOUDGIL)
JUDGE

13.05.2024
Poonam Negi

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>