

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

218

CRM-M-25395 of 2024

DECIDED ON: 4th July, 2024

Amit Sharma

.....PETITIONER

VERSUS

State of Union Territory, Chandigarh and another

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Samay Sandhawalia, Advocate for petitioner.

Mr. Abhinav Gupta, Addl. PP for UT, Chandigarh.

SANDEEP MOUDGIL., J (ORAL)

The jurisdiction of this Court has been invoked under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No.202 dated 7.12.2022, under Section 21 of The Narcotic Drugs and Psychotropic Substances Act, 1985, (for short 'the NDPS Act') registered at Police Station Sector 31, Chandigarh.

2. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the instant FIR at the behest of respondent No.2 Sultan Singh, who is a retired IPS Officer from Haryana Cadre and is using his influence on authorities through the officers who are deputed with the UT Administration in Police department. He has also made reference from the status report which was filed today in Court by way of affidavit of Sh. Rajneesh, Deputy Superintendent of Police, District Crime Cell, Sector 24, UT Chandigarh, to assert that the details of FIR mentioned in para-7 of



the present petition mostly relates to house tress pass based on a concocted story at the behest of respondent No.2 and out of total eight cases, in two cases are under Sections 457, 380, 411 of the Indian Penal Code and another under Section 18, 27 and 29 of the NDPS Act, he was convicted.

3. It has been further argued on behalf of petitioner that there is total non-compliance of the provisions of Section 50 of NDPS Act as no Gazetted Officer was called upon at the spot and neither there is any independent witness cropped up by the prosecution/raiding party who has planted a recovery of another 1 kg of heroine from his house after getting the disclosure statement recorded under coercion, situated at H. No.83-C Ist Floor, Raipur Khurd, Chandigarh on 10.12.2022, apart from 2 kg heroine which was recovered from the bag in the conscious possession allegedly carried out by the petitioner in his hand.

4. It is also the case proposed by learned counsel for petitioner in support of his false implication and biased approach of the prosecution urging that he had named three other co-accused in his disclosure statement but none of them was neither investigated nor nominated in the the instant FIR. It shows the pre-determined mind of the Investigating Officer just to harass the petitioner on account of one on going litigation with respondent No.2 qua the property in which he is a joint holder along with respondent No.2 but later on, on account of certain disputes between the two, respondent No.2 is using the undue influence of his official position.

5. Custody Certificate dated 4.7.2024 filed by UT Administration along with status report is taken on record. Copy of the same has been handed over to learned counsel for petitioner.

6. It has been argued on behalf of learned State counsel seeking dismissal of the instant petition that the petitioner is a habitual offender who is involved in 15 other such FIRs out of which, in one of the NDPS Act case he has been acquitted and in one of the cases he has been convicted and in other two cases he has completed the sentence.

7. Be that as it may having regard to the fact that charges were framed in the case on 03.08.2023 and out of total 21 prosecution witnesses, seven witnesses have been given by the prosecution and three have been examined and the remaining are yet to be examined and the FIR relates back to the year 2022. The petitioner is already in incarceration for 1 year 6 month and 21 days behind the bar and the allegation of false implication is yet to be determined by the trial Court which will take long time to complete the proceedings. Still 11 witnesses are yet to be examined by the prosecution and on that account the petitioner cannot be put behind the bar which would tantamount to his life and liberty.

8. This Court is obvious of the fact that the petitioner cannot be detained behind the bars for an indefinite period, which would tantamount to violation of principle of criminal jurisprudence i.e. "*bail is a rule and jail is an exception*", as has been held by Division Bench of this Court in ***Rajinder Singh versus State of Haryana; 2022(2) RCR (Criminal) 85*** as well as by the Apex Court in "*Dataram Singh vs. State of Uttar Pradesh & Anr.*", 2018(2) R.C.R. (Criminal) 131 apart from the fact that Article 21 of the Constitution of India also includes right of speedy trial and expeditious disposal of the same.

9. As far as the pendency of the other FIRs is concerned, the involvement of the present petitioner as mentioned in para no.7 of the status

report relied upon by the learned State counsel, this Court has been consistently following the law laid down 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 wherein it has been held that the incriminating material and the evidence of that FIR will not be read in the present FIR in any manner whatsoever.

10. In the light of above, 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.

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

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

4th July, 2024
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No