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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-31990-2024 (O&M)
Date of decision: 05.11.2024

Sarabjit Singh @ Babbi

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Tushar Sharma, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. This is third petition filed under Section 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking regular bail in case bearing FIR No.120 dated 13.06.2022 under Sections 22/29/61/85 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), registered at Police Station Sultanpur Lodhi, District Kapurthala.
2. The present FIR was registered on the allegations that the petitioner was allegedly found in possession of 185 grams of intoxicant powder. On being asked to show any licence or permit for keeping the same in his possession, he could not produce the same. As per FSL report, Alprazolam



was detected in the sample parcel of intoxicant powder recovered from the possession of the petitioner. The recovered contraband i.e. 185 grams of Alprazolam from the petitioner is more than 100 grams, which is commercial in nature.

3. Learned counsel for the petitioner, *inter alia*, contends that earlier two petitions i.e. CRM-M-51405-2022 and CRM-M-50654-2023 were dismissed as withdrawn on 29.05.2023 and 30.01.2024, respectively and now the petitioner has undergone the custody of more than 02 years and 04 months and out of total 14 prosecution witnesses, none has been examined till date. The delay in conclusion of trial is not attributable to the petitioner, as he is in judicial custody since 14.06.2022.

4. *Per contra*, learned State counsel produces the custody certificate dated 04.11.2024 of the petitioner in the Court today, which is taken on record. He opposes the prayer for grant of regular bail to the petitioner on the ground that the petitioner is not entitled to bail, as he is habitual offender and is involved in 04 more cases under NDPS Act and apart from this, he is also involved in some other cases under different provisions of law.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioner is behind bars since 14.06.2022 and the trial of the case will take long time in its conclusion, as none out of total 14 prosecution witnesses has been examined so far. The culpability, if any, would be determined at the time of trial. Keeping the petitioner in further detention without the prospect of the



trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

6. The foundational concept of the criminal jurisprudence is to ensure speedy trial. The Hon'ble Supreme Court has repeatedly reiterated that right to speedy trial is enshrined in Article 21 of the Constitution of India. Speedy trial would cover investigation, enquiry, trial, appeal, revision and retrial etc. i.e. everything starting with the accusation against the accused and expiring with the final verdict of the last Court.

7. It has further been held in law that if a person is deprived of his liberty under a procedure which is not reasonable, fair, or just, such deprivation would be violative of his fundamental right under Article 21 of the Constitution of India. The procedure so prescribed must ensure speedy trial for determination of the guilt of such person. Some amount of denial of personal liberty cannot be avoided, but if the period of deprivation pending trial becomes excessively long, the fairness guaranteed by Article 21 of the Constitution of India would come into play.

8. In this regard, reference is being made to the law laid down by the Hon'ble Supreme Court in the context of right to speedy trial under Article 21 of the Constitution of India on the following decision:- ***Akhtari Bi Vs. State of M.P., (2001) 4 SCC 355, Surinder Singh Alias Shingara Singh Vs. State of Punjab, (2005) SCC (Crl) 1674, P. Ramachandra Rao Vs. State of Karnataka, (2002) 4 SCC 578, Babu Singh and others Vs. State of U.P., (1978) 1 SCC 579, Takht Singh and others Vs. State of M.P., (2001) 10 SCC***



463; Special Leave to Appeal (Crl) No.2356 of 2010, Kushal Singh Vs. State of U.P. (2JJ.) and Fazal Vs. State of Uttar Pradesh, (2012) 5 SCC 752.

9. A two Judge Bench of the Hon'ble Supreme Court in ***Satender Kumar Antil Vs. CBI, (2022) 10 SCC 51***, with respect to prevailing conditions of undertrial prisoner in India has observed as under: -

“6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

10. In view of the ratio of law laid down by Hon'ble Supreme Court in ***Prabhakar Tiwari Vs. State of UP and Anr. 2020(1) RCR (Criminal) 831*** and ***Maulana Mohd. Amir Rashadi Vs. State of U.P. and Others 2012(2) SCC 382***, the involvement of accused in other criminal cases cannot be the sole ground to deny him the concession of bail.

11. In view the above, present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of



the trial, petitioner Sarabjit Singh @ Babbi is ordered to be released on regular bail during trial on his furnishing bail/surety bonds to the satisfaction of learned Illaqa Magistrate/trial Court concerned.

12. It is clarified that the present petition seeking regular bail to the petitioner is allowed solely on the ground of long custody already undergone by him and without commenting on the merits of the case lest it may prejudice the outcome of the case pending before learned trial Court.

13. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and learned trial Court shall proceed without being prejudiced by observations of this Court.

05.11.2024
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[HARPREET SINGH BRAR]
JUDGE

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