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213 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27513-2024 (O&M)

Date of decision: 28.10.2024

GURBACHAN SINGH @ GAGAN

...PETITIONER

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Jashandeep Singh Sandhu, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG Punjab.

HARPREET SINGH BRAR J. (ORAL)

1. This is the second petition under Section 439 of Cr.P.C. for grant of regular bail in case bearing FIR No. 37 dated 24.04.2023 registered under Section 22 of NDPS Act at Police Station Ghall Khurd District Ferozepur Punjab.

2. The FIR(supra) was lodged against the petitioner on the basis of secret information that when police party was patrolling and checking suspicious persons going from CIA staff Zira to Talwandi Bhai via Mudki etc. and reached underneath the bridge made on Baghapurana road on National Highway, then informer signaled a vehicle to stop, and thereafter he came to ASI Sahab Singh in private and gave information that Gurbachan Singh @ Gagan (petitioner herein) is habitual of selling intoxicant tablets and today also he on his motorcycle No. PB69C 4930 CD DLX colour black is coming from his village Langeana Khurd for selling intoxicant tablets at Mudki and if naka bandi is laid on gate of village Fidaturn on link road, then Gurbachan Singh can be apprehended alongwith intoxicant tablets. Information was found to be credible and trustworthy and the petitioner was apprehended with contraband



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and FIR(supra) under Sections 22/61/85 of NDPS Act was got registered on the basis of aforesaid allegations.

3. Learned counsel for the petitioner *inter alia* contends this is the second petition seeking grant of regular bail to the petitioner and the first petition was dismissed as withdrawn on 08.12.2023 and the present petition has been filed as more than 01 year and 06 months have passed and learned trial Court has failed to conclude its evidence and petitioner is not involved in any other case and case of the petitioner is covered by the ratio of laid down by Hon'ble Supreme Court in SLP 12788-2023 titled as ***Nandalal Mondal @ Abhay Mondal Vs. The State of West Bengal***. Learned counsel further contends that petitioner has been falsely implicated in the present case and drill of mandatory safeguards provided under the NDPS Act have not been followed and no independent witness was joined and the sample was dispatched to the Forensic Science Laboratory after a substantial delay and there is total non-compliance of Sections 42, 50 and 52 of NDPS Act and petitioner is behind the bars since 24.04.2023 and delay in conclusion of trial cannot be attributable to the petitioner as he is in judicial custody and reliance in this regard has been placed upon the judgments of Hon'ble Supreme Court passed in ***Criminal Appeal No. 1202 of 2024 titled as Md. Aliul Islam @ Aliul Islam @ Alius Vs. The State of West Bengal, SLP(Crl.) No. 14970-2023 titled as Debrata Mondal Vs. State of West Bengal, SLP(Crl.) No. 13169/2023 titled as Santarul Islam @ Santa Vs. The State of West Bengal, SLP(Crl.) No. 8512/2023 titled as Indrajit Mondal @ Piglu Vs. The State of West Bengal, SLP(Crl.) No. 14172/2023 titled as Narjul Islam @ Najbul Hoque Vs. The State of West Bengal, Nandlal Mondal @ Abhay Mondal Vs. The State of West Bengal, SLP(Crl.) No. 15284/2023 titled as Subhashri Das @ Rana @***



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Subhoshree Vs. The State of West Bengal, Criminal Appeal No. 1200/2024 titled as Mithun Sk. & Anr. Vs. The State of West Bengal, Criminal Appeal No. 1415/2024 titled as SK. Nasiruddin @ Nasirddin SK. Vs. State of West Bengal, SLP(Crl.) No. 12670/2023 titled as Indadul Shah Vs. The State of West Bengal, Hanef Kharsani @ Hanef Sheikh Vs. Union of India, SLP(Crl.) No. 16663/2023 titled as Ripon Seikh & Ors. Vs. State of West Bengal, Nijam Sheikh @ Md. Nijam SK @ MD Nizam SK Vs. The State of West Bengal, SLP(Crl.) No. 15668/2023 titled as Moidul Sarkar Vs. The State of West Bengal, SLP(Crl.) No. 2354/2024 titled as Saniya Bibi @ Soniya Bibi Vs. The State of West Bengal, SLP(Crl.) No. 15496/2023 titles as Saddam Hossain Vs. State of West Bengal, SLP(Crl.) No. 6046/2024 titled as Bijon SK @ Golam Murselim Vs. The State of West Bengal and Criminal Appeal No(s) 245/2020 @ SLP(Crl.) No. 8823/2019 titled as Chitta Biswas @ Subhas Vs. The State of West Bengal.

4. Per contra, learned State counsel filed the custody certificate, which is taken on record and opposes the prayer made by learned counsel for the petitioner on the ground that there are serious and specific allegations against the petitioner. However, he could not controvert the fact that petitioner is not involved in any other case.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that petitioner is behind the bars since 26.04.2023 i.e. for 01 year and 06 months as on 26.10.2024. Out of total 15 prosecution witnesses, only 11 have been examined so far. Culpability, if any, would be determined at the time of the trial.

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. In view of the above, the present petition is allowed and the petitioner-Gurbachan Singh @ Gagan is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

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

October 28, 2024

Ajay Goswami

(HARPREET SINGH BRAR)

JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No