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

CRM-M-37049-2024

Date of decision: 28.11.2024

Gurpreet Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rakesh Nehra, Senior Advocate with
Mr. Sauhard Singh, Advocate and
Mr. Ompal Potha, Advocate
for the petitioner.

Mr. Subhash Godara, Addl.A.G., Punjab.

HARPREET SINGH BRAR, J. (ORAL)

This second petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.242 dated 21.10.2022 under Sections 21/61 of the NDPS Act and Section 52(A) of the Prisoners Act added later on, registered at Police Station Kapurthala, District Hoshiarpur, Punjab. The first bail application was dismissed as withdrawn on 01.03.2024.

The present FIR was registered on the basis of secret information received by the Inspector, Jasbir Singh that one, Harminder Singh @ Sonu, who has been confined in Central Jail, Kapurthala in some case, got mobile phone in the jail and used to supply intoxicant substance through his brother-in-law, namely, Gurpreet Singh (the petitioner herein). The accused/petitioner used to take lift from the vehicles such as trucks etc and used to supply intoxicant substance at the instance of Harminder Singh @ Sonu. On the day of receiving information, the accused/petitioner was coming from the side of Kanjli Veyin



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and upon looking at the police party, he became nervous and tried to turn back and the police party nabbed him and enquired about him and informed him that he has a legal right to get himself and his car searched either from the Magistrate or from some Gazetted Officer. The accused/petitioner said that he want his search to be conducted through some Gazetted Officer. Upon this, memo of non-consent of the accused/petitioner was prepared and at around 03:55 P.M., Inspector made a phone call from his number to the Deputy Superintendent of Police, Sub Division, Kapurthala and at 04:20 P.M., he was reached at the spot. Thereafter, he enquired about the accused/petitioner and ice was seen lying in a transparent polythene in the pant worn by the accused/petitioner and the same was weighed around 400 grams. Thereafter, the same was put into the plastic box and parcel was prepared and sealed with the stamp of the Inspector and further sealed by DSP and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that this is second bail application and the first bail application was dismissed as withdrawn on 01.03.2024 and till date, only two witnesses have been examined out of 13 and the present petition has been filed on the ground of delay in the conclusion of the trial. The petitioner is behind the bars since 21.10.2022 and has been falsely implicated in the present case after he was picked up in his shop in Hoshiarpur and it was captured in the CCTV camera installed near the shop of the petitioner. The police official could be seen in the CCTV footage and his arrest can be shown in District Kapurthala. He further submits that the case of the petitioner is covered by the ratio of law laid down by the Hon'ble Supreme Court in SLP No.12788 of 2023 titled as 'Nandalal Mondal @ Abhay



Mondal Vs. The State of West Bengal'. The learned senior 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 21.10.2022 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 @ 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,***



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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 titled 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.

The learned State counsel has filed custody certificate in the Court today which is taken on record and per contra, opposes the grant of regular bail to the petitioner on the ground that there are serious and specific allegations against the petitioner and a huge quantity of contraband has been recovered from the conscious possession of the petitioner. Further the veracity of the CCTV footage has been examined by the senior officer and the same was found to be no help to the petitioner. However, he could not controvert the fact that the petitioner is not involved in any other case.

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

"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.”

Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 21.10.2022. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case has not made much progress as only 02 out of 13 prosecution witnesses have been examined so far. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner.

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.

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.

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.**

Ergo, I am inclined to allow the prayer of the petitioner. Accordingly, the present petition is allowed. The petitioner-Gurpreet Singh is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of the concerned Illaqa Magistrate/Trial Court/Duty Magistrate.

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.

(HARPREET SINGH BRAR)

JUDGE

28.11.2024

Neha

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No