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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-29657-2024
Date of Decision: 07.11.2024

Surinder Kumar @ Apple
...Petitioner

Versus

State of Punjab
...Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Rituraj Singh, Advocate
for the petitioner.

Mr. R.S. Thind, DAG Punjab

KIRTI SINGH, J.(Oral)

The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked for grant of regular bail to the petitioner in case FIR No.209 dated 10.12.2022, under Sections 21, 61, 85 of NDPS Act, 1985 registered at Police Station Bullowal, District Hoshiarpur.

2. The contents of the above-mentioned FIR are reproduced herein below:-

To SHO, Police Station Bullowal Jai Hind today I, SI along with ASI Kashmiri Lal No. 868/HPR, CT Subhash Chander No. 1265/HPR, PHG Budh Parkash No. 25882 carrying laptop and printer were going in the area of Nasrala, Taragarh, Mandial etc. in connection with patrolling and search of bad elements and when the police party turned from Hoshiarpur -Jalandhar road towards Taragarh then a person having Hindu personality seen coming on a Scootery and on looking the police party, he suddenly stopped his scoottry and tried to



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turn back, but since his scootry got slipped, he fell down on the ground, he got up and tried to turn then myself SI Maninder Singh has stopped his car and apprehended him with the help of associate officials and asked his name, then he disclosed his name as Surinder Kumar @ Apple son of Hari Krishan resident of Ward No. 3, Sham Churasi, Police Station Bullowal, District Hoshiarpur, then SI Maninder Singh has informed him about his name, rank and posting and said that I, SI Maninder Singh No. 522/JR posted as Incharge Police Post Nasrula, Police Station Bullowal District Hoshiarpur. I and my associate officials are in police uniform. I have doubt that there is some intoxicant material in your possession, therefore search of you and your Scootry bearing registration No. PB07-AT-9210 colour silver Make MAESTRO is to be conducted, but you have legal right that you can get done the search of you and your Scootry bearing registration No. PB07-AT-9210 colour silver Make MAESTRO in the presence of any Magistrate or Gazetted officer, then arrangements for the same can be made or you can be taken before them. Therefore said person said that you can conduct the search of me and my Scootry bearing. registration No. PB07-AT-9210 colour silver Make MAESTRO, I have trust upon you, therefore his consent memo has been prepared and prior to conducting his search, SI Maninder Singh has given notice under section 50 of NDPS Act to the said person and prior conduct his search, SI Maninder Singh has tried to join any public witness in the police party but everybody shown their helplessness but nobody got ready for the same. Thereafter SI Maninder Singh has conducted the search of said Surinder Kumar alias Apple in the presence of associate officials, then a heavy polythene colour black is found from the right side pocket of his Upper, which has been opened and checked and on checking, same is found to Intoxicant material in the said polythene and on weighing the said intoxicant material through weighing machine, its weight is found to be 260 grams, which has been put into same black colour polythene and after putting the said black colour



polythene in plastic box, turned the same into parcel and sealed the parcel with his seal bearing impression MS and also prepared the sample of seal and after using seal, the same is handed over to ASI Kashmiri Lal No. 868/HPR. The said parcel containing intoxicant material has been taken into police possession and Scootry bearing registration No. PB07-AT-9210 colour silver Make MAESTRO has also been taken into police possession through memo. Accused Surender Kumar above said could not present any permit or license to keep the said intoxicant material in his possession, therefore accused Surender Kumar @ Apple, while keeping said intoxicant material in his possession, has committed offence under section 22 of NPS Act, 1985, therefore the Ruqa has been written and the same has been sent to the Police Station by the hand of PHG Budh Parkash No. 25882 for registration of case, after register case, number of the same be intimated, special reports of the case be sent to the control room. Officers be intimated about it. Special reports be prepared and sent through ASI Jaswinder Singh 106 Hsp to the Illaqa Magistrate and officers. Control room be informed through wireless.”

3. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in this case. He further submits that he has undergone actual custody of 01 year, 05 months and 05 days and three more cases are registered against him, however, he is on bail in all those cases.

4. Per contra, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. As per the custody certificate, the petitioner has undergone actual custody of 01 year, 05 months and 05 days and there are three more cases registered against him, however, he is on bail in all those cases. He submits that charges were framed on 11.12.2023 and out of 12 prosecution witnesses, 05 prosecution witnesses have been examined. He,



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serious allegations against the petitioner, he is not entitled to the concession of regular bail.

5. Heard the rival submissions made by learned counsel for the parties.

6. As regards the submission of learned State counsel that petitioner is involved in three more criminal cases, reference is placed upon the judgment of the Hon'ble Supreme Court in **Maulana Mohd. Amir Rashadi Vs. State of U.P. and another, 2012 (2) SCC 382** in which, it is held that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other/another case(s). The relevant portion of the said judgment is reproduced herein-below:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

7. The charges were framed on 11.12.2023 and out of total 12 prosecution witness, 05 prosecution witnesses have been examined till date. The petitioner has undergone actual custody of 01 year, 05 months and 05 days. Further detention of the petitioner will not serve any useful purpose and will be violation of Article 21 of the Constitution of India including the right to speedy trial, and is against the principle "Bail is a rule, jail is an exception" as elucidated in the judgment of Apex Court in ***"Dataram Singh vs. State of Uttar Pradesh and another", (2018) 3 SCC 22.***



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8. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. The Apex Court in "*Abdul Rehman Antulay and others v. R.S. Nayak and another*", 1992(2) RCR (Criminal) 634 observed that Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial.

9. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. Admittedly, the charges have been framed and only five prosecution witness has been examined out of 12 prosecution witnesses till date. Therefore, this Court is of the view that further incarceration of the petitioner would not serve any purpose.

10. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing adequate bail/surety bonds to the satisfaction of the concerned learned trial Court/Duty Magistrate. The petitioner shall also abide by the following conditions:-

- (i) The petitioner will not tamper with the evidence during the trial.
- (ii) The petitioner will not pressurize/intimidate the prosecution witness(s).
- (iii) The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
- (iv) The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.
- (v) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the



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facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

10. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

11. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

07.11.2024
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(KIRTI SINGH)
JUDGE

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