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

Sr. No.220

CRM-M-29901-2024 (O&M)
Date of decision : 10.12.2024

Kuldeep

..... Petitioner

VERSUS

State of Haryana

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Ms. Garima Sharma, Advocate for the petitioner
Through video conferencing.

Mr. Gaurav Bansal, DAG, Haryana.

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.35 dated 22.03.2024, under Section 18-C of NDPS Act, 1985, registered at Police Station Loharu, District Bhiwani.

2. The translated version of the FIR is reproduced below:-

“To the Station House Officer, Police Station Loharu, Jai Hind, today I ASI along with HC-Narender Kuamr, 1023, EHC Laxman No.943 Constable Pawan Kumar 901, in a government vehicle bearing registration No. HR-16GV-2492 Driver EHC Ramesh Leela 636 for crime patrolling I am present near the temple, Loharu Bhiwani Road, Kharkadi Mod. The special informer met and informed the ASI that Kuldeep, son of Ramkumar, resident of Kharkadi village Kharkadi, was standing on the banal bridge on the road towards Kharkadi, wearing a black t-shirt, sky blue jeans and slippers on his feet

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and was carrying intoxicants. If apprehended immediately, he can be controlled along with drugs. The information is reliable, then necessary instructions have been given to the informer and leaving him. After informing the fellow employee about the situation about informant, notice has been prepared under 42 NDPS, for filing diary and for information to the senior officers, the constable Pawan Kumar 901 is being sent to Police Station Loharu. I, ASI along with fellow employee departed in government vehicle to the place informed by the informer. When the ASI along with the accompanying employee and on the government vehicle reached the canal bridge on the road towards village Kharkadi at the place indicated by the informer, a young boy was seen standing as per the appearance described by the informer, who after seeing the police party, started leaving, from who was apprehended by the ASI, with the help of fellow employees, after overcoming the distance of 15/20 steps, he asked for his name and he told his name as Kuldeep, son of Ramkumar, resident of Kharkadi. Who had a black polythene in his hand. After giving full introduction to Kuldeep, he gave a notice under Section 50 NDPS, that you are Kuldeep, son of Ramkumar, resident of Kharkadi, through this notice informing that he is in suspicion to be in possession of intoxicants and you are to be searched. You have full right that any Executive Magistrate or Gazetted Officer can be called on the spot to search you or you can be produced before them. Inform the reply with notice. Kuldeep and the witness appended their respective signatures on the notice. Kuldeep replied in the notice that he wants to conduct his search in front of the Executive Magistrate. On receiving the written reply, ASI contacted his mobile no. 9416360561, the Executive Magistrate Mr. Tejpal, Urban Sector, Loharu, appointed by the Deputy Commissioner, was contacted on his mobile number 8168671985 at the time of 11.30 AM, informed about the

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situation and informed about coming to the spot, after receiving the information, he waited for some time for the Executive Magistrate Mr. Tejpal Urban Sector, Loharu was reached present at the spot at about 12.32 PM. Who were informed about the situation. After introducing himself the Executive Magistrate I, ASI Head Constable Narender Kumar 1023 after getting the search done by him, I, ASI was instructed to search Kuldeep son of Ramkumar resident of Kharkadi, on which I, ASI carried out the search of Kuldeep son of Ramkumar resident of Kharkadi as per the rules in the presence of Executive Magistrate Mr. Tejpal Urban Sector, Loharu and when the black polythene took him into his right hand was opened and checked, in my experience opium was recovered. When I weighed the recovered opium along with the polythene with the electric fork I had, the total weight was 274 Grams. Whose parcel was prepared and was sealed with three SS stamps. After used the seal, the seal was handed over to HC Narender Singh 1023 and Executive Magistrate Shri Tejpal, Urban Secretary Loharu also sealed the parcel with his seal VS. After using the seal, he kept it with himself. The recovered opium parcel was taking into police possession through memo. The Executive Magistrate and accused Kuldeep above and the witnesses have appended their respective signatures on the memo. The Executive Magistrate Mr. Tejpal Urban Secretary Loharu issued instructions to take action as per rules against the accused Kuldeep son of Ramkumar resident of Kharkadi, District Bhiwani and left the spot. Accused Kuldeep, son of Ramkumar, resident of Kharkadi, District Bhiwani, District Bhiwani, has committed the crime under Section 18C-61-85 NDPS Act by having intoxicating substance opium in his possession. On which the complaint is being sent to the police station through EHC Laxman No. 943 to register a FIR. On which the FIR should be registered and a special report of the

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FIR should be prepared, informed by the FIR number and sent through proper channel to the service of the higher officer and the Area Magistrate. A competent officer should be sent to the spot for further investigation of the case/FIR. I, ASI am present at the spot. Today, in the area of Village Kharkadi, SD ASI SAJJAN 573 CIA-2, Bhiwani, Dated 22.03.2024 AT-1:30 PM Mobile No. 9416360561."

3. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in this case. He further submits that allegedly, 274 grams of opium was recovered from the petitioner which is non-commercial quantity. The petitioner has been in custody since 22.03.2024.

4. *Per contra*, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. He on the basis of status report dated 28.09.2014 submits that the petitioner was arrested on 22.03.2024. The petitioner is a habitual offender and there are various other criminal cases registered against him under IPC and Arms Act. He on instructions from ASI-Krishan Kumar submits that charges were framed on 15.07.2024 and out of 18 total prosecution witnesses, 08 witnesses have been examined. He however, submits that in view of 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. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. Admittedly, petitioner is in custody since 22.03.2024 and 274 grams of opium recovered from the

petitioner which is non-commercial quantity. Charges were framed on

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15.07.2024 and out of 18 total prosecution witnesses, 08 witnesses have been examined. Therefore, further incarceration of the petitioner will not serve any 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”.**

7. 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.

8. As regards the submission of learned State counsel that petitioner is involved in other/one more criminal case(s), 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:-

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“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.”

9. 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 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

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proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

10.12.2024
Ramandeep Singh

Whether speaking / reasoned	Yes/No
Whether Reportable	Yes/No