

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

CRM-M-31292-2023

PALWINDER SINGH ALIAS SABBI

....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

Present: Mr. Shubham Pathania, Advocate for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

1. The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.39, dated 07.05.2021 (Annexure P-1), under Sections 21-B/21-C/18/29/61/85 of the NDPS Act, 1985, registered at Police Station Sarai, Amant Khan, District Tarn Taran, Punjab.

2. Learned counsel for the petitioner contends that there is a recovery of 8 grams of heroin, which is non-commercial in nature that too from a polythene bag, as per the prosecution story which is alleged to be concocted one since by no stretch of imagination it could be said that a person would carry heroin in a polythene bag especially in hand. It is further submitted that the subsequent recovery of 1 kg 350 gms. of heroin and 06 gms. opium from the present petitioner Palwinder Singh is a planted contraband with which he has no relevancy or connection and the prosecution has not produced any incriminating or connecting evidence with the said contraband fastened upon him.

3. Had it been the case so, learned counsel for the petitioner further submits that the petitioner would have easily hidden the same in his pocket. This very fact in itself is sufficient to create a serious doubt in the

story of the prosecution to implicate the petitioner in the present case and on that account, further asserting that he is in jail for more than 3 years and is entitled for concession of regular bail added with the fact that after filing of the challan on 03.11.2021, no witness has been examined so far.

4. This Court has called for the reply on account of the fact argued by the learned counsel for the petitioner that after filing of challan in November, 2021 what proceedings have been carried further by the trial Court. In compliance thereof, a reply has been filed today in Court by way of an affidavit of Tarsem Masih, PPS, Deputy Superintendent of Police, Sub Division Tarn Taran dated 22.04.2024 along with the said reply, zimni orders from 03.11.2021 till 01.04.2024 have been placed on record as Annexures R-1 to R-38, which is taken on record. Copy thereof has been supplied to the learned counsel for the petitioner today in Court.

5. Perusal of the zimni orders would depict that accused Palwinder Singh is not being produced by the jail authorities regularly along with another accused Sandeep Singh and on that account, trial is not proceeding further.

6. Learned State counsel has also informed the Court that accused Sandeep Singh is reported to have died unfortunately while in custody. The trial Court has been issuing production warrants on multiple occasions but till date even the charges have not been framed so far.

7. Considering the aforesaid facts and circumstances and custody period i.e. 03 years and 03 days, for which the petitioner has suffered incarceration and the fact that the quantity of recovered contraband is non-commercial in nature measuring 8 grams of heroin and the fact that there is subsequent recovery of contraband which is not beyond the shadow of doubt

which raises suspicion on the alleged recovery and the manner in which it has been effected particularly in the light of prosecution failure to explain in the final report. Another aspect also to be borne in mind is that the petitioner is not involved in any other case whatsoever is sufficient to conclude that he is not a habitual offender added with the fact that conclusion of trial will take a long time for which the petitioner cannot be detained behind the bars.

8. In the light of above facts, this Court is sanguine of the fact that according to the proposition settled by the Apex Court in ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131***, that keeping somebody behind the bars, till his guilt is proved, for an indefinite period amounts to infringement of his right to life and liberty, as enshrined under Article 21 of Constitution of India and is against the principle “*bail is a rule*” and “*jail is an exception*”.

9. Therefore, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

10. However, the Senior Superintendent of Police, Tarn Taran is hereby called upon explaining the reasons as to why the accused Palwinder Singh and Baldev have not been produced in the Court since 03.11.2021 which has delayed the trial proceedings.

11. Adjourned to 29.05.2024.

14.05.2024
Poonam Negi

(SANDEEP MOUDGIL)
JUDGE