

2024.PHHC.145981



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

Sr. No.206**CRM-M-30756-2024 (O&M)****Date of decision : 08.11.2024****Kuldeep Singh**

..... Petitioner

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Amandeep Singh Saini, Advocate for the petitioner.

Mr. Kamalpreet Bawa, AAG, 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.76 dated 02.07.2022, under Sections 22, 61 and 85 of NDPS Act, 1985, registered at Police Station Ghanour, Distt. Patiala.

2. The relevant part of the FIR is reproduced below:-

"Copy of Original Rukka, SHO PS Ghanaur, Jai Hind today I ASI along with PHG Nachhatar Singh 30111, PHG Holi Ram 30780 in private vehicle with laptop printer were on patrolling at Seal Ghanoor Road near village Baghora at about 11 AM. Then the secret informer informed in that Kuldeep Singh son of Angrej Singh, resident of Baghora police station Ghanoor, aged about 30 years, body thin and agile, and tied yellow parna, had used to brought intoxicant pills from outside the state and sold them in Punjab, who is now coming from Seal Side village with a large quantity of narcotic pills, if the barricading be done now, Kuldeep Singh can be caught with the said large quantity of narcotic pills, the information is reliable and trustable. Kuldeep Singh son of Angrej Singh resident of Baghora police station Ghanoor has committed offence u/s 22-61-85 NDPS Act by keeping in his possession

2024.PHHC.145981



huge quantity of narcotic pills. The rukka was typed and the case sent to the police station through PHG Holi Ram 30780. The file number be intimated after registration of FIR and the competent authority should be informed about the further action.”

3. Learned counsel for the petitioner *inter alia* submits that the petitioner has been falsely implicated in this case. The petitioner was apprehended on the basis of secret information and the search of the petitioner was not conducted in the presence of any Gazetted Officer or before Magistrate nor any independent witness joined. The petitioner has undergone an actual custody of 02 years 04 months and 03 days and he is involved in 01 another case, however, he is on bail in that case.

4. *Per contra*, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. He has filed custody certificate in Court today and the same is taken on record. As per custody certificate, the petitioner has undergone an actual custody of 02 years, 04 months and 03 days and he is involved in 01 another case however, he is on bail in that case. He on instructions from ASI-Swarn Singh submits that charges were framed on 03.02.2023 and out of total 17 prosecution witnesses, 05 witnesses have been examined till date. He further submits that in view of strict rigorous of Section 37 of the NDPS Act and 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.

2024.PHHC.145881



6. Admittedly, the charges were framed on 03.02.2023 and out of a total of 17 prosecution witnesses, 05 witnesses have been examined till date. The investigation is complete and the petitioner has undergone an actual custody of 02 years, 04 months and 03 days and he is involved in 01 another case, however, he is on bail in that case.

7. It would be unjust to keep him behind bars looking at the condition of the jails which are not conducive for rehabilitation process and detaining the accused persons in jails would also tantamounts to 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”**.

8. As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance has been 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 another case. 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.”

2024.PHHC.145981



9. 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.

10. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. The conclusion of the trial will take a considerable time. Therefore, this Court is of the view that further incarceration of the petitioner will not serve any purpose.

11. 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

2024.PHHC.145981



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.

12. 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.

13. 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.

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

(KIRTI SINGH)
JUDGE

08.11.2024
Ramandeep Singh

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