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

**CRM-M-32262-2024
DATE OF DECISION: 15.07.2024**

**BALKAR SINGH ...PETITIONER
Versus
STATE OF HARYANA ... RESPONDENT**

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. LM Gulati, Advocate for the petitioner(s).
Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked for the grant of regular bail to the petitioner in FIR No. 0023, dated 14.01.2023, under Sections 15/18/61/85 of The Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Sadar Thanesar, District Kurukshetra.

2. Learned counsel for the petitioner contends that the alleged recovery of poppy husk weighing 54 Kg. in 3 sacks was effected from the back of the driver seat of the truck which was being driven by the petitioner and also the owner of the same. One Kg. opium was allegedly effected from the cabin of the truck in a polythene bag. He further asserts that investigation is complete, charges are framed on 02.01.2024 and out of 16 witnesses only one has been examined so far.

3. Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for last 1 year, 5 months and 23 days who is



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not involved in any other case. He has opposed the prayer made in the present petition stating that the petitioner being the driver of the truck was well known of the fact that contraband recovered therefrom belongs to him and as the same being commercial in nature, does not deserve the concession of bail.

4. Be that as it may, having heard learned counsel for the respective parties, this Court is of the considered view that since the petitioner has already suffered sufficient period i.e. 1 year, 5 months and 23 days in custody and the recovery effected is marginally over and above than the commercial quantity whereas the Opium recovered 1 kg in itself is non-commercial in nature, added with the fact that antecedents of the petitioner are clean and as per the principle of the criminal jurisprudence, no one should be considered as guilty till the guilt is proved beyond reasonable doubt and detaining the petitioner behind the bars for an indefinite period would amount to violation of Article 21 of the Constitution of India and is against the principle “Bail is a rule, jail is an exception” as elucidated in the judgement of Apex Court in “***Dataram Singh vs. State of Uttar Pradesh and another;*** (2018) 3 SCC 22”.

5. Even further, right to speedy trial is a part of reasonable, fair and just procedure guaranteed under Article 21. This constitutional right cannot be denied to the accused as is the mandate of the Apex court in “***Hussainara Khatoon and ors (IV) v. Home Secretary, State of Bihar, Patna***”, (1980) 1 SCC 98; wherein it was held as under:



*“10. Directions given by this Court in Hussainara Khatoon (supra) to this effect were left to be implemented by the High Courts **Hussainara Khatoon and ors. (VII) etc. v. Home Secretary, Bihar and ors. etc. -(1995) 5 SCC 326 - para 2** are as follows :*

"2. Since this Court has already laid down the guidelines by orders passed from time to time in this writ petition and in subsequent orders passed in different cases since then, we do not consider it necessary to restate the guidelines periodically because the enforcement of the guidelines by the subordinate courts functioning in different States should now be the responsibility of the different High Courts to which they are subordinate. General orders for release of undertrials without reference to specific fact-situations in different cases may prove to be hazardous. While there can be no doubt that undertrial prisoners should not languish in jails on account of refusal to enlarge them on bail for want of their capacity to furnish bail with monetary obligations, these are matters which have to be dealt with on case-to-case basis keeping in mind the guidelines laid down by this Court in the orders passed in this writ petition and in subsequent cases from time to time. Sympathy for the undertrials who are in jail for long terms on account of the pendency of cases has to be balanced having regard to the impact of crime, more particularly, serious crime, on society and these considerations have to be weighed having regard to the fact-situations in pending cases. While there can be no doubt that trials of those accused of crimes should be disposed of as early as possible, general orders in regard to judge strength of subordinate judiciary in each State must be attended to, and its functioning overseen, by the High Court of the State concerned. We share the sympathetic concern of the learned counsel for the petitioners that undertrials should not languish in jails for long spells merely on account of their inability to meet monetary obligations. We are, however, of the view that such monitoring can be done more effectively by the High Courts since it would be easy for that Court to collect and collate the statistical information in that behalf, apply the broad guidelines already issued and deal with the situation as it emerges from the status reports presented to it. The role of the High Court is to ensure



that the guidelines issued by this Court are implemented in letter and spirit. We think it would suffice if we request the Chief Justices of the High Courts to undertake a review of such cases in their States and give appropriate directions where needed to ensure proper and effective implementation of the guidelines. Instead of repeating the general directions already issued, it would be sufficient to remind the High Courts to ensure expeditious disposal of cases...."

(emphasis added)

6. Moreover 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. And court also observed that the Right to Speedy Trial from the point of view of the accused are:

I. The period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

II. The worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

III. Undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

7. In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing



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bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

8. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

9. Petition is allowed in above terms.

(SANDEEP MOUDGIL)
JUDGE

15.07.2024
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>