202 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-32273-2024 (O&M)
Date of decision: 29.10.2024

SOMDEEP SINGH @ SANDEEP SINGH

...PETITIONER

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rajinder Singh Sidhu, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG Punjab.

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HARPREET SINGH BRAR J. (ORAL)

1. The petitioner is seeking grant of regular bail in his second attempt case bearing FIR No. 201 dated 09.10.2022 registered under Sections 22(c), 27, 61 and 85 of NDPS Act at Police Station City Budhlada, District Mansa.

2. FIR(supra) was registered on the basis of allegations of recovery of 172 strips of Alprazolam tablets IP 0.5mg Alprasafe 0.5, each strip containing 10 intoxicating tablets i.e. total 1720 tablets from a transparent plastic envelope alleged to have been effected from the possession of the petitioner.

3. Learned counsel for the petitioner *inter alia* contends that petitioner is an HIV patient and 1720 intoxicating tablets have been implanted upon him. Learned counsel further submits that mandatory safeguards as provided under the NDPS Act have not been followed. At the time of recovery of alleged contraband from the petitioner, no independent witness from the vicinity has been joined, which creates serious doubt on the case set up by the prosecution. Further there are several shortcomings and discrepancies in the prosecution case due to non-fulfillment of the mandatory provisions. The

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petitioner is behind the bars for more than 02 years and the first petition seeking grant of regular bail was dismissed as withdrawn on 15.01.2024 and in spite of passing of more than 02 years from registration of the FIR(supra), not even a single prosecution witness has been examined so far and case of the petitioner is covered by the ratio of laid down by Hon'ble Supreme Court in SLP 12788-2023 titled as ***Nandalal Mondal @ Abhay Mondal Vs. The State of West Bangal*** and delay in conclusion of trial cannot be attributable to the petitioner as he is in judicial custody and reliance in this regard has been placed upon the judgments of Hon'ble Supreme Court passed in ***Criminal Appeal No. 1202 of 2024 titled as Md. Aliul Islam @ Aliul Islam @ Alius Vs. The State of West Bengal, SLP(Crl.) No. 14970-2023 titled as Debrata Mondal Vs. State of West Bengal, SLP(Crl.) No. 13169/2023 titled as Santarul Islam @ Santa Vs. The State of West Bengal, SLP(Crl.) No. 8512/2023 titled as Indrajit Mondal @ Piglu Vs. The State of West Bengal, SLP(Crl.) No. 14172/2023 titled as Narjul Islam @ Najbul Hoque Vs. The State of West Bengal, Nandlal Mondal @ Abhay Mondal Vs. The State of West Bengal, SLP(Crl.) No. 15284/2023 titled as Subhashri Das @ Rana @ Subhoshree Vs. The State of West Bengal, Criminal Appeal No. 1200/2024 titled as Mithun Sk. & Anr. Vs. The State of West Bengal, Criminal Appeal No. 1415/2024 titled as SK. Nasiruddin @ Nasirddin SK. Vs. State of West Bengal, SLP(Crl.) No. 12670/2023 titled as Indadul Shah Vs. The State of West Bengal, Hanef Kharsani @ Hanef Sheikh Vs. Union of India, SLP(Crl.) No. 16663/2023 titled as Ripon Seikh & Ors. Vs. State of West Bengal, Nijam Sheikh @ Md. Nijam SK @ MD Nizam SK Vs. The State of West Bengal, SLP(Crl.) No. 15668/2023 titled as Moidul Sarkar Vs. The State of West Bengal, SLP(Crl.) No. 2354/2024 titled as Saniya Bibi @ Soniya Bibi Vs. The State of West***

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Bengal, SLP(Crl.) No. 15496/2023 titles as Saddam Hossain Vs. State of West Bengal, SLP(Crl.) No. 6046/2024 titled as Bijon SK @ Golam Murselim Vs. The State of West Bengal and Criminal Appeal No(s) 245/2020 @ SLP(Crl.) No. 8823/2019 titled as Chitta Biswas @ Subhas Vs. The State of West Bengal.

5. Per contra, learned State counsel filed the custody certificate, which is taken on record and opposes the prayer made by learned counsel for the petitioner on the ground that petitioner was found to be in illegal possession of contraband, which falls within the ambit of commercial quantity and as such, in view of the provisions contained under Section 37 of NDPS Act, the petitioner is not entitled to any relief by this Court.

6. Having heard the learned counsel for the parties and after perusing the record, it transpires that petitioner is behind the bars since 12.10.2022 i.e. for 02 years and 14 days as on 26.10.2024. Out of total 11 prosecution witnesses, none has been examined so far. Culpability, if any, would be determined at the time of the trial.

7. The foundational concept of the criminal jurisprudence is to ensure speedy trial. The Hon'ble Supreme Court has repeatedly reiterated that right to speedy trial is enshrined in Article 21 of the Constitution of India. Speedy trial would cover investigation, enquiry, trial, appeal, revision and retrial etc. i.e. everything starting with the accusation against the accused and expiring with the final verdict of the last Court.

8. It has further been held in law that if a person is deprived of his liberty under a procedure which is not reasonable, fair, or just, such deprivation would be violative of his fundamental right under Article 21 of the Constitution

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of India. The procedure so prescribed must ensure speedy trial for determination of the guilt of such person. Some amount of denial of personal liberty cannot be avoided, but if the period of deprivation pending trial becomes excessively long, the fairness guaranteed by Article 21 of the Constitution of India would come into play.

9. In this regard, reference is being made to the law laid down by the Hon'ble Supreme Court in the context of right to speedy trial under Article 21 of the Constitution of India on the following decision:- ***Akhtari Bi Vs. State of M.P., (2001) 4 SCC 355, Surinder Singh Alias Shingara Singh Vs. State of Punjab, (2005) SCC (Crl) 1674, P. Ramachandra Rao Vs. State of Karnataka, (2002) 4 SCC 578, Babu Singh and others Vs. State of U.P., (1978) 1 SCC 579, Takht Singh and others Vs. State of M.P., (2001) 10 SCC 463; Special Leave to Appeal (Crl) No.2356 of 2010, Kushal Singh Vs. State of U.P. (2JJ.) and Fazal Vs. State of Uttar Pradesh, (2012) 5 SCC 752.***

10. In view of the above, the present petition is allowed and the petitioner-Somdeep Singh @ Sandeep Singh is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

11. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

October 29, 2024
Ajay Goswami

(i) Whether speaking/reasoned Yes/No
(ii) Whether reportable Yes/No

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