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

Sr. No.229

CRM-M-34065-2024(O&M)
Date of decision : 21.10.2024

Bharat Kumar

..... Petitioner

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Himmat Singh Deol, 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.31 dated 17.04.2021, under Sections 392, 395 & 384 IPC and Sections 21, 22 & 29 of NDPS Act, 1985, and Sections 25, 54 & 59 of the Arms Act, 1959 (offence under Sections 465, 467, 468 & 471 IPC added later on) registered at Police Station Sadar Kurali, SAS Nagar.

2. The brief facts of the case are that the FIR was registered on the basis of secret information received against co-accused Samuel, Ravi, Jaipal Singh, Karanbir Singh, Rohit Kumar, Neeraj Kumar, Deepak Kumar, Karanvir Singh @ Kanna, Ravinder, Iqbal Singh @ Rubal, Gurjashanpreet Singh, Harmanjit Singh and other unknown persons alleging that the aforesaid persons had formed a gang and were involved in act of drug smuggling using vehicles snatched at gun point. Thereafter, on 09.06.2021,

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the petitioner was apprehended at a check post with one .30 bore pistol and 30 live cartridges.

3. Learned counsel for the petitioner *inter alia* submits that the petitioner has been falsely implicated in this case and he has not been named in the FIR and he was not apprehended at the spot. The petitioner has been nominated as an accused on the basis of statement of ASI-Balwant Singh on 07.06.2021 after an unexplained delay of 02 months from the date of registration of the FIR. The petitioner has undergone an actual custody of 03 years, 04 months and 03 days and is involved in 01 another criminal case. He further submits that the co-accused-Gurjashanpreet Singh has been granted concession of regular bail vide order dated 17.11.2023 passed by a Coordinate Bench of this Court in CRM-M-29086-2023. Learned counsel has relied upon the judgments rendered by Hon'ble the Supreme Court in the cases of **Nitish Adhikary @ Bapan Vs. The State of West Bengal, vide order dated 01.08.2022 passed in SLP (Criminal) No.5769-2022 titled as Mohd. Muslim @ Hussain Vs. State (NCT of Delhi), 2023 AIR (SC) 1648 and Md. Hsanuzzaman and others Vs. State of West Bengal and others SLP (Crl.) No.3221 of 2023, vide order dated 04.05.2023** in support of his contentions.

4. *Per contra*, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. He states that the petitioner was actively involved in the commission of the offence. 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 03

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years, 04 months and 03 days and is involved in 01 another criminal case. He on instructions from the concerned investigating officer submits that charges were framed on 09.01.2023 and out of a total of 48 prosecution witnesses, only one witness has been examined, till date. In view of the 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. Admittedly, the charges were framed on 09.01.2023 and out of a total of 48 prosecution witnesses, only 01 witness has been examined till date. The petitioner has undergone an actual custody of 03 years, 04 months and 03 days and is involved in one another 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

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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.”

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:-

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- (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.
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

21.10.2024
Ramandeep Singh

Whether speaking / reasoned
Whether Reportable

Yes/No
Yes/No