



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

CRM-M-36751-2024
Date of decision: 06.08.2024

Balwinder Singh alias Balwinder Kumar alias Kala Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Manoj Kumar Pundir, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The second petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.129 dated 20.06.2022 under Section 22/25 of NDPS Act (Sections 27-A/29 of NDPS Act were added later on) registered at Police Station Special Task Force, SAS Nagar (Mohali). First application for regular bail was dismissed as withdrawn on 30.01.2024.

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.

Brief facts of the case are that on 26.06.2022, police party headed by ASI Surinder Singh received a secret information that one Balwinder Singh (the petitioner herein), who used to supply intoxicant tablets in the area of

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Amritsar City, is coming to supply the intoxicant tablets to his customer at Gali No.7, Shehnai Palace, Majitha Road, Amritsar. On the basis of said information, the police conducted nakabandi and apprehended accused-Balwinder Singh @ Kala. On conducting search in accordance with law, 15000 intoxicant tablets were recovered from him.

Learned counsel for the petitioner *inter alia* contends that petitioner has been falsely implicated in the present case and there are many lacunae in the prosecution case as the sample allegedly recovered was not handled as per the provisions of the NDPS Act. Neither any independent witness was joined at the time of recovery nor Form-29 was filled at the spot. He further contends that the petitioner was arrested on 20.06.2022. The final report under Section 173 Cr.P.C. has been presented and charges under Section 22/25/27-A/29 of NDPS Act were framed by the learned trial Court on 01.07.2023. However, not even a single prosecution witness has been examined till date.

The learned State counsel has filed custody certificate in the Court today which is taken on record and per contra, opposes the grant of regular bail to the petitioner on the ground that the petitioner was apprehended in possession of 15000 Alprazolam tablets and he must be kept in custody in order to create a deterrent effect in the society.

Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 25.06.2022 as per custody certificate. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case has not made much progress as out of 22 prosecution witnesses,



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none has been examined so far. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

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 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.

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.*

Ergo, I am inclined to allow the prayer of the petitioner in view of the discussion above as well as the judgment rendered by the Hon'ble Supreme Court in 'Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)' 2023 SCC

Online SC 352. Accordingly, the present petition is allowed. The petitioner-Balwinder Singh @ Balwinder Kumar @ Kala is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of the concerned Illaqa Magistrate/Trial Court/Duty Magistrate.

The present petition seeking regular bail to the petitioner is allowed solely on the ground of long custody already undergone by him and without commenting on the merits of the case lest it may prejudice the outcome of the case pending before the trial Court.

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

06.08.2024
Neha

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No