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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of Decision: 24.09.2024

Rajesh Kumar @ Rakesh Kumar @ Pooja

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present:- Mr. J.S. Sandhu, Advocate
for the petitioner.

Mr. R.S. Thind, DAG 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.220 dated 21.12.2023, under Section 21(C) of NDPS Act, 1985 (Section 29 of NDPS Act added later on) registered at Police Station Nahianwala, District Bathinda, Punjab.

2. The facts of the present case are that on 21.12.2023, co-accused Tejinder Singh @ Prince, Pankaj Chhabra @ Panku and Manpreet Singh @ Mani were apprehended by the police party and 400 gms of heroin was recovered from them.

3. Learned counsel for the petitioner submits that petitioner has been falsely implicated in this case and he has been nominated on the basis of disclosure statement made by co-accused Manpreet Singh and no contraband has been recovered from the petitioner.

4. The petitioner has been nominated on the basis of disclosure statement of co-accused and there is nothing on record to connect the petitioner with the



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offence except the aforesaid disclosure statement, which is not admissible in evidence per se in view of the judgment passed by Hon'ble Supreme Court in ***Tofan Singh vs. State of Tamil Nadu, 2021(4) SCC 1***

5. Per contra, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. As per the custody certificate, the petitioner has undergone actual custody of 05 months and 18 days. He further submits that there is one more case registered against the petitioner, in which he has been granted bail after undergoing actual custody of 04 years, 10 months and 28 days. Charges were framed on 20.09.2022 and out of 16 prosecution witnesses, none has been examined. He, however, submits that in view of strict rigors of Section 37 of the NDPS Act and serious allegations against the petitioner, he is not entitled to the concession of regular bail.

6. Heard the rival submissions made by learned counsel for the parties.

7. The charges were framed on 20.09.2024 and out of total 16 prosecution witness, none has been examined till date. The petitioner has undergone actual custody of 05 month and 18 days in the present case and he is behind the bars for about five years. Further detention of the petitioner will not serve any useful purpose and will be 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. 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***



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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.

9. As regards the submission of learned State counsel that petitioner is involved in other/one more criminal case(s), reference is 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 other/another case(s). 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."

10. The Hon'ble Supreme Court in the case of Criminal Appeal No. 1005 of 2022 titled as *State of Haryana Versus Samarth Kumar*, decided on 20.07.2022 held as under:-

"4. The High Court decided to grant pre-arrest bail to the respondents on the only ground that no recovery was effected from the respondents and that they had been implicated only on the basis of the disclosure statement of the main accused Dinesh Kumar. Therefore, reliance was placed by the High Court in the majority judgment of this Court in Tofan Singh v. State of Tamil Nadu reported in (2021) 4 SCC 1.

5. But, it is contended by the learned Additional Advocate General



appearing on behalf of the State of Haryana that on the basis of the anticipatory bail granted to the respondents, the Special Court was constrained to grant regular bail even to the main accused-Dinesh Kumar and he jumped bail. Fortunately, the main accused-Dinesh Kumar has again been apprehended. According to the learned Additional Advocate General, the respondent in the second of these appeals is also a habitual offender.

6. Learned counsel appearing on behalf of the respondent in the first of these Appeals contends that the State is guilty of suppression of the vital fact that the respondent was granted regular bail after the charge-sheet was filed and that therefore, nothing survives in the appeal. But, we do not agree.

7. The order of the Special Court granting regular bail to the respondents shows that the said order was passed in pursuance of the anticipatory bail granted by the High Court. Therefore, the same cannot be a ground to hold that the present appeals have become infructuous.

8. In cases of this nature, the respondents may be able to take advantage of the decision in Tofan Singh v. State of Tamil Nadu (supra), perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.

9. To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondents.

10. In view of the above, the appeals are allowed. The impugned orders are set-aside. As a consequence, the Appellant State is entitled to take steps, in accordance with law. [emphasis supplied]

11. A perusal of the aforementioned judgments would show that bail can be granted to an accused where he has been named in a disclosure statement of his co-accused but there is no recovery from him on his arrest.

12. In the instant case, the petitioner is named in the disclosure statement

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of his co-accused and no recovery whatsoever has been effected from him. Further, the petitioner is a first-time offender, in custody since 23.12.2023 and none of the 16 prosecution witnesses have been examined so far. Therefore, the Trial in the present case will not conclude anytime soon. Hence, the further incarceration of the petitioner is not required as a prima facie satisfaction under Section 37 NDPS can be recorded in the aforementioned factual scenario.

13. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. Admittedly, the charges have been framed and none of the prosecution witness has been examined till date. Therefore, this Court is of the view that further incarceration of the petitioner would not serve any purpose.

14. Without commenting anything on the merits of the case, lest it ramay prejudice the trial, the present petition is allowed and the petitioner is ordered to be released on regular bail on her 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 she 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.



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15. 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.
16. 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.

24.09.2024
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(KIRTI SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No