

2024:PHHC:142296



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

Sr. No.226

CRM-M-38406-2024 (O&M)

Date of decision : 29.10.2024

Jatinder Kumar @ Kaka

..... Petitioner

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Anosh Samson, Advocate for
Mr. G.K. Tiwari, 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.85 dated 24.03.2024, under Sections 21/29-61-85 of NDPS Act, 1985, registered at Police Station Civil Lines Batala, Batala, District Gurdaspur.

2. Learned counsel for the petitioner *inter alia* submits that allegedly 20 grams of heroin was recovered from the petitioner which is non-commercial quantity. He further submits that the petitioner has been falsely implicated in this case and there is non-compliance of Section 50 of the NDPS Act. The petitioner has undergone an actual custody of 07 months and 03 days and he is involved in 03 other cases under the NDPS Act, however, all cases relates to non-commercial quantity.

3. *Per contra*, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. He has filed custody certificate in Court today and the same is taken on record. As per

2024:PHHC:142296



custody certificate, the petitioner has undergone an actual custody of 07 months and 03 days and he is involved in 03 other cases under the NDPS Act, however, all cases relates to non-commercial quantity. He on instructions from the concerned police official submits that challan was presented on 11.06.2024 and charges are yet to be framed and out of total 11 prosecution witnesses, none witness has been examined till date. He however, submits that in view of serious allegations against the petitioner, he is not entitled to the concession of bail.

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

5. Admittedly, the challan was presented on 11.06.2024 and charges are yet to be framed and out of a total of 11 prosecution witnesses, none witness has been examined till date. The recovery made by petitioner is of non-commercial quantity. The petitioner has undergone an actual custody of 07 months and 03 days and he is involved in 03 other cases under the NDPS Act, however, all cases relates to non-commercial quantity.

6. 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”**.

7. As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance has been placed upon the

2024:PHHC:142296



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 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.”

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 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. 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.

10. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and the petitioner is

2024:PHHC:142296



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:-

- (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.

11. 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.

12. 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

29.10.2024
Ramandeep Singh

Whether speaking / reasoned	Yes/No
Whether Reportable	Yes/No