

212

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-40445-2024 (O/M)

Date of decision : 01.10.2024

Jagsir Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present:- Mr. Jashandeep Singh Sandhu, Advocate
for the petitioner.

Mr. Nirmaljit Singh Diwana, Senior DAG Punjab.

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HARSH BUNGER, J. (ORAL)

1. This is a third petition filed under Section 439 Cr.P.C. on behalf of petitioner (Jagsir Singh) for grant of regular bail in case bearing FIR No. 04 dated 13.01.2023, under Sections 22 (C), 25, 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS. Act'), registered at Police Station Sadar, Budhlada, District Mansa, Punjab.

2. The first petition filed under Section 439 of Code of Criminal Procedure (CRM-M-16453-2023) by petitioner was withdrawn on 09.05.2023 and the second petition filed under Section 439 of Code of Criminal Procedure (CRM-M-40078-2023) by petitioner was dismissed as not pressed on 26.04.2024.

3. Custody certificate(s) dated 30.09.2024 of the petitioner filed by learned State counsel in Court today, is taken on record, subject to all just exceptions.

4. Learned counsel for petitioner submits that the petitioner has not

been named in FIR and he (petitioner) has been falsely implicated in this case. It is submitted that the petitioner was neither apprehended from the spot nor any recovery was effected from him (petitioner). It is next submitted that the petitioner has been arrayed as an accused in this case only on the basis of disclosure statement of co-accused. It is submitted that co-accused of petitioner, namely, Nirmal Dass alias Lakhi (CRM-M-31775-2024) and Mandeep Singh alias Kala (CRM-M-32802-2024) have already been granted regular bail by this Court, vide order dated 11.07.2024 and order dated 19.07.2024, respectively, whereas co-accused, namely, Suba Singh has been granted anticipatory bail by this Court, vide order dated 15.05.2023, passed in CRM-M-6600-2023. It is contended that even otherwise in the present case, the mandatory provisions of Sections 42, 50, 52 of NDPS Act were not complied with.

4.1. Learned counsel for petitioner submits that the petitioner has undergone actual custody of 1 year, 8 months and 13 days (as on 30.09.2024); investigation in the case is complete, challan stands presented 07.06.2023; charges have been framed on 25.07.2023. It is stated that out of total 18 prosecution witnesses, 1 PW has been fully examined, 2 PWs have been partially examined and 2 PWs have been given up. It is further stated that petitioner is involved in 3 other cases (1 case under Excise Act and 2 cases under NDPS Act), out of which petitioner has completed sentence in 2 cases and in third case under NDPS Act, the petitioner is facing trial. It is submitted that trial in this case is likely to take some time to conclude and no useful purpose would be served by keeping the petitioner behind the bars for indefinite period. Learned counsel for the petitioner submits that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court. Learned counsel further submits that the petitioner is also willing to furnish security in the form of Fixed Deposit

Receipt (F.D.R.) of Rs. 50,000/- before the concerned Court, so as to ensure his presence before the Court on each and every date of hearing. Accordingly, prayer for grant of regular bail is made.

5. Per contra, learned State counsel opposes the prayer of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence as the same involves recovery of 4500 intoxicating tablets (make Tramadol Prolonged Release Tablets) from Nirmal Dass alias Lakhi and Mandeep Singh alias Kala and on the basis of disclosure statement of Mandeep Singh alias Kala, one Kamir Singh was nominated as an accused, from whom 750 intoxicating tablets (make Tramadol Prolonged Release Tablets) were recovered. It is stated that on disclosure statement of Kamir Singh, the present petitioner was arrayed as an accused and upon arrest of petitioner, he named one Suba Singh, who was also nominated as an accused. It is further stated that during investigation, the DOPE test reports of petitioner and other accused were found positive. It is contended that the recovery of intoxicating tablets/substance in the present case falls under category of commercial quantity, therefore, rigorous of Section 37 of NDPS Act are attracted. It is still further submitted that the petitioner does not have clean antecedents and he was/is involved in 3 other cases. It is submitted that in case, the petitioner is extended the benefit of regular bail then there is every likelihood that he may influence prosecution witnesses or may even abscond and thus delay the trial. Accordingly, prayer for dismissal of instant petition has been made.

6. Learned counsel for the petitioner, in rebuttal, has relied upon the judgment of Hon'ble Supreme Court in ***Maulana Mohd. Amir Rashadi v. State of U.P. and another***, 2012(2) SCC 382 to contend 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 cases. 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."

7. Heard.

8. Hon'ble the Supreme Court in the case of ***Dheeraj Kumar Shukla Versus The State of Uttar Pradesh***, SLP (Criminal) No. 6690/2022 decided on 25.01.2023 observed that in case of long custody period, involving quantity recovered to be of commercial nature, where the trial is yet to commence, though charges had been framed, the condition of Section 37 of NDPS Act can be dispensed with. In the case of ***Bhupender Singh Versus Narcotic Control Bureau*** (2022) 2 RCR (Crl.) 706, the Division Bench of this Court observed with regard to achieving balance between right to speedy trial guaranteed under Article 21 of the Constitution of India and rigors of Section 37 of NDPS Act. Similarly, in the case of ***Shariful Islam alias Sarif Versus The State of West Bengal*** SLP (Crl.) No. 4173/2022, decided on 04.08.2022, Hon'ble the Supreme Court granted bail to the petitioner in a case of recovery of commercial quantity of contraband, considering incarceration for over 1 year and 6 months and there being no likelihood of completion of trial in the near future. In the case of ***Munasi Masih Versus State of Punjab***, CRM-M-31504-2022, decided on 06.02.2023, this Court granted bail to a first offender from whom commercial quantity of contraband had been recovered and only 2 out of 13 PWs have been examined, by observing that in view of delayed trial, the rigors of Section 37 of NDPS Act can

be diluted to an extent and the petitioner can be granted bail, keeping in mind the right to a speedy trial as envisaged under Article 21 of the Constitution of India.

9. Considering the aforesaid facts and circumstances, especially the fact that the petitioner is in custody for a period of 1 year, 8 months and 13 days (as on 30.09.2024); investigation in the case is complete, challan stands presented on 07.06.2023 and even charges have been framed on 25.07.2023, however, during this long period, out of total 18 prosecution witnesses, only 1 PW has been examined, 2 PWs have been partially examined and 2 PWs have been given up, therefore, this Court has reason to believe that trial in the case is likely to take some time to conclude. That apart, the other co-accused in this case have already been released on bail, therefore, further incarceration of petitioner would be violative of his right enshrined under Article 21 of Constitution of India, thus, the present petition for grant of bail deserves to be allowed.

10. So far as the apprehension expressed by learned State counsel that the witnesses could be influenced by the petitioner, suffice it to state that in the event of any such conduct, the prosecution can always approach the competent Court for cancellation of bail. Accordingly, it is observed that the State/Prosecuting Agency/State police shall be at liberty to observe the behaviour of the petitioner during the bail period, and in case it feels that the petitioner is indulging in influencing any of the witnesses or tampering with the prosecution evidence in any manner or otherwise causing interference with the progress of trial, it shall be open for the State/Prosecuting Agency/State police to move to the trial Court for cancellation of the bail, which shall be decided by the trial Court on merits.

11. In view of the above discussion, present petition is allowed and the petitioner (Jagsir Singh) is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq

Magistrate/Duty Magistrate concerned. However, the concerned Station House Officer shall be informed about the release of petitioner and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of case/trial and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer. He would also furnish his undertaking to the effect that he will not indulge in any illegal activity. The petitioner shall also appear before the concerned Police Station/Station House Officer on first Monday of every month till the conclusion of trial and in case the Station House Officer refuses to mark his presence, he is permitted to make an application before learned Illaqa Magistrate concerned.

12. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs. 50,000/- and submit the same with the trial Court. The same would be liable to be forfeited as per law, in case the petitioner remains absent from trial without any sufficient cause.

13. Nothing expressed hereinabove shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

14. The petition is accordingly disposed of.

15. Pending application(s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

01.10.2024
sjks

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