

2024:PHHC:124114



104 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-45158-2024
DECIDED ON: 19.09.2024

AMIT KUMAR PETITIONER

VERSUS

STATE OF PUNJAB RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Jasinder S. Sekhon, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 483 of BNSS, 2023 has been invoked for grant of regular bail to the petitioner in case FIR No. 24, dated 27.02.2023, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act'), registered at Police Station Garhshankar, District Hoshiarpur.

2. Submissions

On behalf of petitioner:

Learned counsel for the petitioner submits that the petitioner

has been falsely implicated in the present case. It is asserted that the recovery in the present case is of 105 grams of intoxicant powder i.e. Alprazolam, from the transparent polythene. It has further been asserted that it is highly improbable that a person carrying the contraband, would carry the same in a transparent polythene. It is contended that the recovery in the present case is marginally above the commercial quantity and further the weight of the polythene is including while weighing the contraband.

The assertion is that there is a complete violation of Sections 42 and 50 of the Act.

Reference has been made to the various orders passed by the Co-ordinate Benches of this Court i.e. order dated 02.08.2021 passed in *CRM-M-4408-2021 titled Banti Kaur @ Bhanti Kaur Vs. State of Punjab, Binder Kaur @ Goga Vs. State of Punjab reported as 2021(3) RCR (Criminal) 360, Jaskaran Singh @ Jassu Vs. State of Punjab, reported as 2021(2) RCR (Criminal) 837, order dated 28.02.2020 passed in CRM-M- 8026-2020 titled as Lakhwinder Singh @ Lakha Vs. State of Punjab.*

On behalf of respondent-State:

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He prays for dismissal of the present petition stating that the petitioner is involved in another case of similar nature, meaning thereby, he is a habitual offender

Learned State counsel has opposed the prayer made in the present petition but could not dispute the fact that the contraband is alleged to have been carried in a transparent polythene bag. He, however, submits that the weight of the total recovered contraband comes out to be 105

grams of 'Alprazolam' which would fall within the category of commercial quantity.

3. **Analysis and conclusion**

Admittedly, the recovery was effected from a transparent polythene bag, the same made the case of the prosecution doubtful and it was highly unlikely that a person who is committing an offence with respect to the contraband, would carry the same in a transparent polythene bag.

As far as the contention of the learned State counsel with regard to the pendency of other cases is concerned, reliance can also be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as ***"Baljinder Singh alias Rock vs. State of Punjab"*** decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would lend the petitioner in a situation of denial the concession of bail.

This Court would go little further to consider that there is a difference between grant of bail under Section 439 and 438 of Cr.P.C., as compared to suspension of sentence under Section 389 of Cr.P.C.. In the case of suspension of sentence, the conviction order is already there whereas while considering the petition either under Section 438 or 439

Cr.P.C., there may be presumption of innocence which in fact is a fundamental postulate of criminal jurisprudence.

Considering the said principle alone, the Hon'ble Apex Court in the case of *Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131* has held that the “*bail is the rule and jail is an exception*”.

In the present case after framing of charges on 23.01.2024, out of total 10 prosecution witnesses, only one has been examined, which is sufficient for this Court to infer that conclusion of trial shall take considerable time and no useful purpose would be served by keeping the petitioner behind bars for an indefinite period, which would also violate his right of speedy trial under Article 21 of the Constitution of India. Moreover, the petitioner has already undergone incarceration for a period of 10 months and 4 months.

Accordingly, the present petition is allowed and the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the learned Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

(SANDEEP MOUDGIL)
JUDGE

19.09.2024
sham

- | | |
|---------------------------------|----------|
| 1. Whether speaking/ reasoned : | Yes / No |
| 2. Whether reportable : | Yes / No |