

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-50285-2022 (O&M)
DECIDED ON: 30.01.2024

NANAK SINGHPETITIONER

VERSUS

STATE OF PUNJABRESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ruhani Chadha, Advocate
for the petitioner.

Mr. Ramdeep Partap Singh, Sr. DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked for the second time under Section 439 Cr.P.C., for grant of regular bail to the petitioner in FIR No.111, dated 18.05.2022 (Annexure P-1), under Sections 18, 21 and 22 of NDPS Act, 1985 (Section 27-B of NDPS Act added later on), registered at Police Station Dharamkot, District Moga.
2. The case set forth by the petitioner is that 50 tablets of Etizolam has been planted upon him with a concocted story that he threw the same on the road, which weighed 06.45 grams as per FSL Report. He seeks concession of regular bail while arguing that the whole case has been registered on the basis of a secret information and there is violation of Section 42 of the NDPS Act as the recovery was effected after the sunset and before sunrise and in this regard, no separate zimini orders were incorporated or recorded by the Investigating Officer.
3. On the other hand, learned State counsel has filed a short reply by way of an affidavit of Mr. Ravinder Singh, PPS, Deputy Superintendent of Police, Dharamkot, District Moga along with custody certificate of the petitioner, which is

taken on record. According to the custody certificate, the petitioner has suffered incarceration for a period of 01 year 08 months & 13 days and is involved in one more case bearing FIR No.204, dated 29.09.2021, under Sections 21/22/29 of NDPS Act, registered at Police Station Dharamkot, wherein he was nominated as an accused on the basis of disclosure statement and in that case, he is on bail. He submits that there is compliance of Section 42 of NDPS Act, 1985, as according to the record, zimni orders were duly prepared, which are part of the challan as well.

4. Looking into the totality of the facts and circumstances and also the fact that charges were framed in the instant FIR on 03.01.2023; out of total 14 prosecution witnesses, only 03 has been examined till date added with fact that no useful purpose would be served by keeping the petitioner behind the bars for uncertain period.

5. This Court is sanguine of the fact that according to the proposition settled by the Apex Court that keeping somebody behind the bars, till his guilt is proved, for an indefinite period amounts to infringement of his right to life and liberty, as enshrined under Article 21 of Constitution of India and is against the principle “*bail is a rule and jail is an exception*”.

6. As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can 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 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 of the concession of bail.

7. In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

8. In the afore-said terms, the present petition is hereby allowed.

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

30.01.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>