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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-46565-2024
Decided on : 24.09.2024

BALWINDER SINGH

... Petitioner

Versus

STATE OF PUNJAB

... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Sandeep Chopra, Advocate
for the petitioner(s).

Mr. Randhir Singh Thind, DAG, Punjab.

KIRTI SINGH, J. (Oral)

The jurisdiction of this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 has been invoked for grant of regular bail to the petitioner in case FIR No.86 dated 22.06.2024, registered under Sections 15, 61 and 85 of NDPS Act, at Police Station Passiana, District Patiala.

2. The brief facts of the present case are that on 22.06.2024, the petitioner was apprehended by the police party with 1 kg 200 grams Poppy Husk (Dode Chura Post) in his possession.

3. Learned counsel for the petitioner *inter alia* submits that the petitioner has been falsely implicated in this case and even otherwise recovery is of marginally higher than the small quantity. The petitioner has already undergone an actual custody of 02 months and 29 days and there are 02 other cases registered against him. The petitioner was convicted in FIR no. 284, dated 23.10.2007, U/s

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years and fine of Rs. 1 lakh, vide order dated 09.02.2012. The petitioner has preferred an appeal bearing CRA-S-905-SB-2012 before this Hon'ble Court and his sentence was suspended vide order dated 03.11.2015 and in FIR no.137, dated 17.06.2021, U/ss 22/61/85 NDPS Act, PS: Passiana wherein 200 intoxicating tablets (non commercial quantity) was allegedly recovered, the petitioner was granted bail in the said FIR.

4. Per contra, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. Learned State counsel has filed the custody certificate dated 23.09.2024 in Court today, which is taken on record. As per the custody certificate, the petitioner has undergone actual custody of 02 months and 29 days and there are 02 other cases registered against the petitioner, however in one case, he is on bail and in other case, his sentence has been suspended. He further on instructions submits that the challan was presented on 17.08.2024 and charges are yet to be framed and out of 08 prosecution witnesses, none has been examined till date. However in view of the serious allegations against the petitioner, he is not entitled to the concession of regular bail.

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

6. Admittedly, the recovery is of 1.2 kg of poppy husk, which is non-commercial quantity. The challan was presented on 17.08.2024 and charges are yet to be framed and out of 08 prosecution witnesses, none has been examined till date. The petitioner has undergone actual custody of 02 months and 29 days and there are 02 other cases registered against the petitioner, however in one case, he is on bail and in other case, his sentence has been suspended.. The conclusion of the

trial will take considerable time and further incarceration will not serve any



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purpose.

7. As regards the submission of learned State counsel that petitioner is involved in other criminal cases, the Hon'ble Supreme Court in "**Maulana Mohd. Amir Rashadi v. State of U.P. and another**", 2012(2) SCC 382 has 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 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. 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".

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

10.

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.

11.

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

Kavita

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No

(KIRTI SINGH)

JUDGE