

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

210-CRM-M-47356-2024

Date of decision: 26.09.2024

Fabbo Kaur @ Fambo Kaur

... Petitioner

VS.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. PS Sekhon, Advocate for the petitioner

Mr. JS Rattu, DAG Punjab

Sandeep Moudgil, J.

The petitioner has filed the present petition under Section 439 CrPC seeking grant of regular bail in case FIR No.112 dated 20.07.2023 under Section 22 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (in short, the NDPS Act), registered at Police Station Dhanaula, District Barnala.

Learned counsel for the petitioner submits that no recovery was effected from the possession of the petitioner and the recovery of contraband i.e. 1000 yellow colour loose tablets from the polythene has been implanted upon him. He then urged that the FSL report in regard to the contraband allegedly recovered from the possession of the petitioner and her co-accused is still awaited.

Learned State counsel has filed custody certificate dated 25.09.2024 which is taken on record and as per which, the petitioner has undergone total sentence of 1 year 2 months and 3 days, pending trial. Besides, another case under NDPS Act is pending against the petitioner wherein she is on bail.

Heard learned counsel for the parties and gone through the record.

As far as the pendency or 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 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.

That apart, challan in the present case has been filed on 01.08.2023; investigation is complete and charges have been framed on 05.11.2023 and out of 9 PWs, only 2 witnesses have been examined and for that reason the petitioner cannot be put behind the bars for an indefinite period particularly in the light of the fact that there is no recovery effected by the police from the person of the petitioner.

A Division Bench of this High Court in **Rajender Singh vs. State of Haryana, 2022(2) R.C.R. (Criminal) 85** has held that a right under Article 21 of the Constitution of India includes right to speedy trial and expeditious disposal which is also in public interest primarily showing concern on a following view point.

- (a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;
- (b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and
- (c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

Taking into consideration the totality of the circumstances particularly the fact that trial in the present case is moving at a snail’s pace inasmuch as out of total 9 PWs, only two PWs have been examined so far and in that eventuality, it is abundantly clear that it will take certainly long time to conclude and detaining the petitioner behind the bars for an indefinite period would amount to violation of Article 21 of the Constitution of India and is against the principle “Bail is a rule, jail is an exception” as elucidated in the judgement of Apex Court in “***Dataram Singh vs. State of Uttar Pradesh and another,, (2018) 3 SCC 22***”.

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 trial Court/Duty Magistrate, concerned.

26.09.2024
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No