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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-53875-2023
Date of Decision: 28.10.2024

Anil Sood and another
...Petitioners

Versus

State of Haryana
...Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. R.S. Bains, Senior Advocate with
Mr. M.S. Chauhan, Advocate
for the petitioners.

Mr. Gaurav Bansal, DAG , Haryana.

KIRTI SINGH, J.(Oral)

The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked for grant of regular bail to the petitioners in case FIR No.409 dated 26.07.2023, under Sections 21, 27A, 29, 61, 85 of NDPS Act, 1985 registered at Police Station Ambala Cantt., District Ambala, Haryana.

2. The aforementioned FIR has been registered on the basis of secret information that Dishant Kumar @ DK was indulged in drug smuggling and on instruction and after taking money from Satyam Chadda, Waris, Lakhan Kumar and Vicky he is coming from Delhi with huge quantity of smack and if barricading is done near cremation ground, Jagadhari Road, Ambala Cantt, he can be

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apprehended. Later, Dinesh Kumar was apprehended with 1 Kg 413 gms of heroin.

3. Learned counsel for the petitioners submits that petitioners have been falsely implicated in this case and they were nominated only on the basis of disclosure statement made by the co-accused Dishant Kumar. He further submits that the petitioner No. 1-Anil Sood has undergone actual custody of 01 year, 01 month and 13 days and one more case is registered against him, in which he is on bail and petitioner No. 2 – Shivam Sood has also undergone actual custody of 01 year, 01 month and 13 days and no other case has been registered against him

4. Per contra, learned State counsel has vehemently opposed the submissions made by the learned senior counsel for the petitioners. As per the custody certificate, the petitioner No. 1 has undergone actual custody of 01 year, 01 month and 13 days and there is one more case registered against him, however, he is on bail in that case and petitioner No. 2 has also undergone actual custody of 01 year, 01 month and 13 days and there is no other case registered against him . He submits that challan was presented on 18.01.2024 and charges were framed on 16.05.2024 and out of 46 prosecution witnesses, none has been examined. He, however, submits that in view of strict rigors of Section 37 of the NDPS Act and serious allegations against the petitioners, they are not entitled to the concession of regular bail.

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

6. The charges were framed on 16.05.2024 and out of total 46 prosecution witness, none has been examined till date. The petitioners have undergone actual custody of 01 year, 01 month and 13 days. Further detention of



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the petitioners will not serve any useful purpose and will be 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.

7. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. The Apex Court in "*Abdul Rehman Antulay and others v. R.S. Nayak and another*", 1992(2) RCR (Criminal) 634 observed that Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial.

8. The veracity of the allegations leveled against the petitioners shall be established during the course of the trial. Admittedly, the charges have been framed and no prosecution witness has been examined till date. Therefore, this Court is of the view that further incarceration of the petitioners would not serve any purpose.

9. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and the petitioners are ordered to be released on regular bail on their furnishing adequate bail/surety bonds to the satisfaction of the concerned learned trial Court/Duty Magistrate. The petitioners shall also abide by the following conditions:-

- (i) The petitioners will not tamper with the evidence during the trial.
- (ii) The petitioners will not pressurize/intimidate the prosecution witness(s).



- (iii) The petitioners will appear before the trial Court on the date fixed, unless personal presence is exempted.
- (iv) The petitioners shall not commit an offence similar to the offence of which they are accused of, or for commission of which she is suspected.
- (v) The petitioners 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.

28.10.2024
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(KIRTI SINGH)
JUDGE

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