

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-57092-2023
DECIDED ON: 14.02.2024**

MAKHAN SINGH**.....PETITIONER**

VERSUS

STATE OF PUNJAB**.....RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. J.S. Sandhu, Advocate for the petitioner.

Mr. S.S. Gill, Sr. DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked for fourth time under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.156, dated 06.11.2020, under Sections 22, 29 of NDPS Act, 1985, registered at Police Station Barnala, District Barnala, Punjab.
2. Learned counsel for the petitioner contends that the alleged recovery has been planted upon the petitioner, as only 1080 tablets of Tramadol have been recovered from a transparent bag, which was being carried by the petitioner and there is a delay of 05 months in sending the samples to the FSL for examination.
3. The false implication of the petitioner has been averred by Mr. Sandhu, Advocate appearing for the petitioner, referring to an altercation with the police by the petitioner on certain issues on previous occasions and on that account, the present FIR came to be registered against him. It is also submitted before this Court that the contraband i.e. 3520 tablets were recovered from other co-accused namely Manjeet Kaur, has also been added to the quantity of intoxicant tablets recovered from the present petitioner,

which is against the well settled proposition of law inasmuch as i.e. separate recovery from another person but both the persons have been nominated as an accused jointly in the instant FIR just to make the offence more grave with the sole idea that the petitioner should not be given benefit of small quantity of contraband while seeking bail.

3. Learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He asserts that it is a case of chance recovery from the conscious possession of the petitioner and the quantity recovered therein is commercial in nature and the petitioner is involved in other cases of similar nature, meaning thereby he is a habitual offender and on that account, seeks dismissal of the instant petition for regular bail.

4. Be that as it may, considering the custody period i.e. 02 years, 10 months and 16 days, for which the petitioner has already suffered incarceration behind the bars and the fact that charges have already been framed and out of total 8 prosecution witnesses, only two witnesses have been examined so far, meaning thereby the conclusion of the trial will take certainly long time.

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, the custody certificate clearly reflects

that petitioner is on bail in both the other two FIRs rather out of these two FIRs, in one FIR No.78 dated 18.07.2007, he has served the sentence while in custody in another case and 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.

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.

(SANDEEP MOUDGIL)
JUDGE

14.02.2024

Poonam Negi

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No