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IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

CRM-M-54133-2024  
Date of decision:-10.12.2024

MOHAMMAD ANWAR MIAN

... Petitioner

Versus

STATE OF PUNJAB

... Respondent

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Kanishth Ganeriwala, Advocate  
for the petitioner.  
Mr. Ankit Grewal, DAG, Punjab.

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SANJIV BERRY, J. (ORAL)

Learned State counsel has filed reply by way of affidavit dated 05.12.2024 of Deputy Superintendent of Police, Sub Division Malout, District Sri Muktsar Sahib along with custody certificate dated 09.12.2024, the same are taken on record, copies thereof, have been supplied to the counsel opposite.

2. Arguments heard.
3. The instant petition has been preferred by the petitioner under Section 439 of Criminal Procedure Code, for grant of regular bail in the following case (Annexure P-1):-

| FIR No. | Dated      | Sections       | Police Station                           |
|---------|------------|----------------|------------------------------------------|
| 100     | 04.07.2010 | 18 of NDPS Act | Sadar Malout, District Sri Muktsar Sahib |

4. It is *inter alia* contended by learned counsel for the petitioner that the petitioner is innocent and has been falsely implicated in this case. He contends that petitioner was arrested in this case on 06.07.2010 and was



granted concession of bail by the learned trial Court but due to absence from Court proceedings, petitioner was declared proclaimed offender on 02.07.2012 and later on was arrested on 11.03.2024 when he was produced in Court on production warrants. He submits that the absence from the Court proceedings was not intentional and the petitioner was in custody since 17.02.2019. He submits that the alleged recovery of 2 kg of opium from the petitioner is non commercial in nature. He contends that challan has already been presented and trial has commenced. Hence, he prays for grant of concession of regular bail to the petitioner.

5. *Per contra*, learned State counsel referring to the reply submitted by the State has opposed the bail application and submits that petitioner had deliberately failed to appear before the trial Court and was declared proclaimed offender on 02.07.2012 and was again arrested in this case on 11.03.2024. he submits that petitioner is also involved in FIR No. 10 dated 17.02.2019, under Section 18 of NDPS Act and was convicted in the said FIR. He submits that considering the nature and gravity of offence he is not entitled to concession of bail. However, he has admitted that the sentence of the petitioner in FIR No. 10 dated 17.02.2019 was suspended by this High Court vide order dated 08.08.2024 (Annexure P-3).

6. After considering the rival contentions and perusing the record, it transpires that the petitioner was arrested in the present case and alleged recovery of 2 kgs. of opium was effected from him and he was granted concession of regular bail by the trial Court on 03.11.2010. Later on petitioner absented from the Court proceedings and was declared proclaimed offender on 02.07.2012 and was arrested on 11.03.2024. Admittedly, the alleged recovery of 2 kgs of opium is non commercial in nature. Petitioner

was convicted and sentenced for 10 years in FIR No.10 dated 17.02.2019 under Section 18 of NDPS Act, however his sentence has been suspended by this High Court vide order dated 08.08.2024 (Annexure P-3). After completion of investigation, challan has already been presented in Court, and trial commenced. The conclusion of trial will take sufficient long time to ascertain criminal liability, if any, of the petitioner.

7. Resultantly, without commenting on the merits of the case, it is observed that no purpose would be served by keeping petitioner behind bars. Therefore, the present petition is allowed. The petitioner is ordered to be released on bail subject to furnishing bail bonds/surety bonds to the satisfaction of learned Trial Court concerned, if not required in any other case; undertaking to regularly appear on each and every date; not to leave the country without prior permission of the Court; and not to tamper with evidence of prosecution in any manner.

8. It is further made clear that in case the petitioner is found involved in any case under NDPS Act, after his release on bail, it will be open for the prosecution to move an application for cancellation of his bail in accordance with law.

9. Any observation made above shall not be construed as opinion of this Court on the merits of the case.

10. Pending application(s) if any, also stands disposed of.

(SANJIV BERRY)  
JUDGE

10.12.2024

|      |     |                            |        |
|------|-----|----------------------------|--------|
| Gyan | i)  | Whether speaking/reasoned? | Yes/No |
|      | ii) | Whether reportable?        | Yes/No |