



CRM-M-58084-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-58084-2023 (O&M)

Date of Decision: 23.10.2024

Sukhmander Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present:- Mr. Arshdeep Singh Brar, Advocate
for the petitioner.

Mr. R.S. Thind, DAG Punjab

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 petitioner in case FIR No.34 dated 16.04.2023, under Section 15 of NDPS Act, 1985 (Section 29 of NDPS Act added later on) registered at Police Station Moga, District Moga.

2. The facts of the present case are that the present FIR was registered by the police on the allegations that a police party headed by ASI Basant Singh were performing duty at check point barrier on bridge leading to Moga-Ferozepur Road, in the area of Village Rattian. Meanwhile, a car bearing No.PB-08/BM-8017 was stopped for checking, on asking driver disclosed his name as Sukhmander Singh whereas lady sitting on conductor seat disclosed her name as Kirandeep Kaur. On search of car, three bags each containing 20 kilograms of poppy husk were

recovered.



3. Learned counsel for the petitioner *inter alia* submits that petitioner has been falsely implicated in the present case. He further submits that there was no recovery from the person of the petitioner but from the car and there is non-compliance of Section 42 of the NDPS Act. The petitioner has been in custody for 01 year, 06 months and 05 days and there are three other cases registered against him and he has been acquitted in all three cases. He further submits similarly situated co-accused has been granted concession of regular bail by Coordinate Bench of this Court vide order dated 19.09.2023 passed in CRM-M-45706-2023.

4. Per contra, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. As per the custody certificate, the petitioner has undergone actual custody of 01 year, 06 months and 05 days and there are three more cases registered against him and he has been acquitted in all three cases. He, however, submits that there are serious allegations against the petitioner and 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 charges were framed on 03.10.2023 and out of total 08 prosecution witness, no witness has been examined till date. The petitioner has undergone actual custody of 01 year, 06 months and 05 days and there are three more cases registered against him and he has been acquitted in all three cases. Further detention of the petitioner 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***



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 petitioner shall be established during the course of the trial. Admittedly, the charges were framed and three prosecution witness have been examined till date. The petitioner has undergone actual custody of 01 year, 06 months and 05 days. Therefore, this Court is of the view that further incarceration of the petitioner would not serve any purpose.

9. This Court is of the view that considering the aforesaid peculiar facts and circumstances, the bar contained under Section 37 of the NDPS Act will not apply in the present case since there has been no recovery from the person of the petitioner but from the car. So far as the second ingredient for making a departure from the bar contained under Section 37 of the NDPS Act is concerned, it is not the case of the State counsel that in case the petitioner is released on bail, then he may repeat the offence or may abscond from justice and therefore, at this stage, both the ingredients contained under Section 37 of the NDPS Act for making a departure from the bar contained thereon remain satisfied

10. 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.

11. 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.
12. 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.

(KIRTI SINGH)
JUDGE

23.10.2024
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No