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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-54961-2024
Date of decision : 10.12.2024

Jaswinder Singh @ Jassi @ Nanna ... Petitioner

Versus

State of Punjab ... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Abhishek Singla, Advocate for
Mr.Prince Goyal, Advocate
for the petitioner.

Mr.P.S. Bhandari, AAG, Punjab.

VIKAS BAHL, J.(ORAL)

1. This is the first petition under Section 483 of the B.N.S.S., 2023 for grant of regular bail to the petitioner in FIR no.0068 dated 04.06.2022 registered under Section 15 of the Narcotic Drugs and Psychotropic Substances Act , 1985 (hereinafter referred to as “NDPS Act”) (Section 25 and 29 of the NDPS Act added later) at Police Station Badhni Kalan, District Moga.

2. Learned counsel for the petitioner has submitted that the petitioner has not been named in the FIR and no recovery has been effected from the petitioner and he is sought to be implicated solely on the basis of disclosure statement made by co-accused Mandeep Singh and Satnam Singh and a perusal of challan shows that no disclosure statement has been recorded and only DDR no.42 dated 04.06.2022 was recorded by the police.

It is submitted that even after the arrest of the petitioner, no recovery was



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effected from the petitioner and there is no incriminating material against the petitioner connecting the petitioner with the crime. It is further submitted that a perusal of challan would show that even there is no phone calls between the co-accused from whom the recovery has been effected and the present petitioner and that the petitioner has been in custody since 11.08.2024 as per the custody certificate and after filing of the supplementary challan against the petitioner on 20.09.2024, even the charges are to be framed and since there are 18 witnesses, the trial is likely to take time. It is stated that the other co-accused of the petitioner have already been granted regular bail vide orders passed by the Coordinate Bench, which are annexed as Annexures P-4 to P-7 with the present petition.

3. Learned State counsel, on the other hand, has opposed the present petition for regular bail and while referring to the affidavit dated 09.12.2024 filed on behalf of the State has submitted that the petitioner was named in the present case on the basis of disclosure statement of the co-accused Mandeep Singh and Satnam Singh from whom the recovery has been effected and the DDR no.42 dated 04.06.2022 was recorded in the said regard. It is submitted that recovery from the co-accused was of commercial quantity and that the petitioner is involved in other cases including the case under the NDPS Act and thus, deserves no concession of regular bail. However, other facts have not been disputed.

4. Learned counsel for the petitioner, in rebuttal, has relied upon the judgment of Hon'ble Supreme Court in ***“Maulana Mohd. Amir Rashadi***



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vs. State of U.P. and another”, reported as **2012 (2) SCC 382** to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

5. This Court has heard learned counsel for the parties and has perused the paper book.

6. It is not in dispute that the petitioner has not been named in the FIR and is sought to be implicated solely on the basis of disclosure statement of co-accused and even after the said disclosure statement and arrest of the present petitioner, no recovery has been effected from the petitioner nor there is any incriminating material against the petitioner other than the disclosure statement made by co-accused. Even with respect to the said disclosure statement made, it is not disputed that there is no disclosure statement of co-accused recorded. The other co-accused of the petitioner have already been granted regular bail by the Coordinate Bench. A perusal of the affidavit dated 09.12.2024 filed on behalf of the State would show that since no cell phone was recovered from the possession of the co-accused, it has thus been stated that there was no occasion for the local



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police to proceed to obtain CDRs of their cell phones and thus, apparently there is no conversation between the co-accused from whom recovery has been effected and the petitioner.

7. The Hon'ble Supreme Court in the case of "***Tofan Singh Vs. State of Tamil Nadu***" reported as ***2021(1) RCR (Criminal) 1***, had observed as under:-

"152. Thus, to arrive at the conclusion that a confessional statement made before an officer designated under [section 42](#) or [section 53](#) can be the basis to convict a person under the [NDPS Act](#), without any non obstante clause doing away with [section 25](#) of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India."

8. The petitioner has been in custody since 11.08.2024 and the supplementary challan has been presented on 20.09.2024 and after the presentation of the challan, the case is stated to be fixed for framing of charges against the present petitioner and there are stated to be 18 witnesses, none of them have been examined after presentation of the supplementary challan and thus, the trial is likely to take time.

9. Keeping in view the above-said facts and circumstances as well as the law laid down in the above-said judgments, the present petition is allowed and the petitioner is directed to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to him not being required in any other case. The petitioner shall also abide by the following conditions:-



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- a). The petitioner will not tamper with the evidence during the trial.
 - b). The petitioner will not pressurize / intimidate the prosecution witness(s).
 - c). The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
 - d). 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.
 - e). 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.
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. Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

(VIKAS BAHL)
JUDGE

December 10, 2024
Davinder Kumar