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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of Decision: 09.12.2024

Baljit Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present:- Mr. B.K. Mehta, Advocate
for the petitioner

Mr. Vinay Kumar Malhotra, 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.116 dated 01.09.2024 registered under Sections 29, 27, 18/61/85 of NDPS Act, 1985 at Police Station Urban Estate Patiala.

2. The contents of the above-mentioned FIR are reproduced herein below:-

"At this stage a ruqa Has been received in the Police Station from Ct Harinder Singh 3022/PAT sent by SI Gurmandar Singh 118/PR of PS Urban Estate Patiala for registration of case against Gurbaj Singh son of Man Singh, resident of Hajara Singh Colony Sanaur, Patiala and Sagar Singh, son of Charanjit Singh, resident of Sanauri Adda near Sheetla Mata Mandir Patiala under Section 18/61/85 NDPS Act contents of our as under :-



Station House Officer Sahib, Police Station Urban Estate Patiala, Jai Hind. Today I SI, along with HC Darbaj Singh 362/Pat, Ct. Harvinder Singh 3022/Pat, Ct. Gurpreet Singh 3586/Pat and Ct. Mandeep Singh 1923/PAT borne on Official vehicle No. PB-65-BF-1058 , being driven by Gurjinder Singh 2324/ PAT and carrying a laptop and printer had laid a naqa, in search of bad elements and for patrolling, on the passage of Shagan Vihar- Neelam Vihar coming from the side of Vill. Chaura Patiala towards Sanour that at about 7-20 PM that a care of white colour was seen coming from the side of Patiala Driver of the car saw the police party and tried to hurriedly give a turn to the car but the police party went running towards the car and got it halted and asked driver of the car and the person sitting besides him to come out of the car and they alighted from the car and locked the car with its key. When names of apprehended persons, driver of the car and the person accompanying him were inquired the driver introduced himself as Gurbaj Singh son of Man Singh, resident of Sant Hajara Singh Colony, Saner District, Patiala, aged 45 years, height 5.8", fair complexion, beard and hair already cut, heavy built but agile. The person accompanying him introduced himself as Sagar Singh son of Charanjit Singh, resident of Sanouri Adda, near Sheetla Mata Mandir, Patiala, who was 34 years old, 5.7" in height, fair complexioned, beard and hair already cut and agile body. When they were strictly asked about trying to turn the car in a hurry on seeing the police party, both of them said that they take opium and there was opium in their car. In this regard a report under Section 42 N.D & P.S Act was sent to Circle Officer through Ct. Mandeep Singh 1923. Thereafter I, SI, introduced myself as SI Gurmandar Singh posted at Police Station Urban Estate Patiala and that my nameplate was displayed on my uniform Videography was done on e-Sakshi App. I,SI, and the police party apprehended Gurbaj Singh and Sagar Singh and searched the car of white colour which led to the recovery of opium from a black poly-envelope placed under the front left seat of the car. It was weighed on the computerized



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weighing scale and the opium came out to be 1 kg which I put back in the same black envelope and then into a plastic box and further into a cloth parcel which was sealed by me with my seal bearing impression GS. After sealing the cloth parcel with my seal bearing impression GS, specimen of the seal was separately prepared and the seal so used was handed over to HC Darbaj Singh 362/Pat. Then I, SI, took cloth parcel containing 1 kg. opium, sealed with the seal GS along with sample of the seal, the car of white colour make Swift Maruti Suzuki model 2009 no. HR 12-M-0465 vide memo of recovery into police possession and the memo was witnessed by Ct. Gurpreet Singh 3586/Pat and HC Darbaj Singh 362/Pat. Gurbaj Singh son of Man Singh resident of Sant Hajara Singh Colony Sanour, District Patiala and Sagar Singh son of Charanjit Singh resident of Sanouri Adda near Sheetla Mata Mata Patiala by having kept 1 kg. of opium in their possession have committed an offence under section 18/61/85 NDPS Act and therefore ruqa for registration of the FIR against Gurbaj Singh son of Man Singh resident of S Hazara Singh Colony Sanner District Patiala and Sagar Singh son of Charanjit Singh resident of Sunner Adda near Sheetla Mata Mandir Patiala is being sent through Ct. Harvinder Singh 3022/Pat to the Police Station. Its number be informed. In-charge control room be informed. I SI along with fellow officials get busy into investigations at the spot. In the area of Shagan Vihar- Neelam Vihar coming from the side of Vill. Chaura Patiala at 8.50 p.m. Sd/-Gurmandar Singh SI Police Station Urban Estate Patiala dated 01-09-2024.

On this FIR against Gurbaj Singh son of Man Singh resident of S Hazara Singh Colony Sanour District Patiala and Sagar Singh son of Charanjit Singh resident of Sanour Adda near Sheetla Mata Mandir Patiala has been lodged and record was got updated from the MHC. IC control room, Patiala is being informed through e-mail. Copies of the FIRs are being sent to the Area Magistrate Sahib and senior officers. Original ruqa alongwith copy of FIR have been handed over



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to Ct. Harvinder Singh 3022/PAT, who had brought it, for being taken over to SI Gurmandar Singh 118/PR.”

3. Learned counsels for the petitioner *inter alia* submits that allegedly, co-accused Gurbaj Singh and Sagar were apprehended with 1 Kg Opium. He further submits that the petitioner has been nominated as an accused only on the basis of disclosure statement of co-accused. He also submits that co-accused Gurbaj Singh and Sagar have been granted bail by the learned trial Court vide order dated 10.10.2024 (Annexure P-2) and order dated 16.10.2024 (Annexure P-3). Learned counsel further contends that the disclosure statement made while in police custody has no evidentiary value in the eyes of law and it is *per se* not admissible in view of the judgment of Hon'ble Apex Court passed in ***Toofan Singh Vs. State of Tamil Nadu 2021(4) SCC 1***. Learned counsel submits that the petitioner has undergone actual custody of 02 months and 23 days and there is no other case registered against him.

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 02 months and 23 days and there is no other case pending against him. He further on instructions submits that the charges were framed on 02.12.2024 and out of 13 prosecution witnesses, none has been examined. However, in view of the serious allegations against the petitioner, he is not entitled to the concession of regular bail.

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

6. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. Admittedly, the petitioner has undergone actual custody of 02 months and 23 days and there is no other case



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pending against him. Out of total of 13 prosecution witness, none has been examined till date. The conclusion of trial will take a considerable period and 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 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. 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 they are accused of, or for commission of which he is suspected.



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(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.

9. 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.
10. 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.

09.12.2024
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(KIRTI SINGH)
JUDGE

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