2024:PHHC:165011

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

CRM-M-57083-2024
Date of decision : 11.12.2024

Surjit Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Parminder Singh Sekhon, Advocate
for the petitioner.

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

VIKAS BAHL, J.(ORAL)

1. This is the first petition under Section 439 of the Cr.P.C. for grant of regular bail to the petitioner in FIR no.69 dated 16.04.2021 registered under Sections 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act , 1985 (hereinafter referred to as "NDPS Act") at Police Station Dirba, District Sangrur.

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 Sulakhan Singh and Baljinder Singh, from whom the alleged recovery has been effected. It is submitted that as per the challan, even no separate disclosure statement has been

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recorded and that even after the petitioner was arrested, no recovery was effected from the petitioner and there is no incriminating material against the petitioner connecting the petitioner with the crime. It is further submitted that as per the custody certificate, the petitioner has been in custody since 07.09.2024 and the supplementary challan has been prepared against the petitioner and the charges are yet 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, from whom the recovery has been effected, have already been granted regular bail vide orders, which are annexed as Annexures P-3 and P-4 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 10.12.2024 filed on behalf of the State, has submitted that during interrogation of the co-accused, the said co-accused had disclosed that the present petitioner was the supplier of the narcotic drugs, which have been recovered. It is submitted that recovery from the co-accused Sulakhan Singh and Baljinder Singh was of commercial quantity and that the petitioner is involved in other cases including the cases under the NDPS Act and thus, deserves no concession of regular bail.

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

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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, it is not disputed that there is no disclosure statement of co-accused recorded. The other co-accused of the petitioner, from whom the recovery has been effected, have already been granted regular bail vide orders dated 17.04.2023 and 24.04.2023, which have been annexed as Annexueres P-3 and P-4 along with the present petition.

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:-

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> *"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 07.09.2024 and the supplementary challan has been prepared against the petitioner and charges are yet to be framed against the present petitioner and there are stated to be 18 witnesses 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:-

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

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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 11, 2024.
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Whether speaking / reasoned Yes/No
Whether reportable Yes/No

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