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

Sr. No.238

CRM-M-58481-2024 (O&M)
Date of decision : 18.12.2024

Baldev Singh @ Bau

..... Petitioner

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Amit Arora, Advocate for the petitioner

Mr. R.S. Thind, DAG, Punjab.

KIRTI SINGH, J. (Oral)

The jurisdiction of this Court under Section 483 BNSS, 2023 has been invoked for grant of regular bail to the petitioner in case FIR No.99 dated 06.08.2024, under Section 18(b) of NDPS Act, 1985 (offence under Section 29 of NDPS Act added later on), registered at Police Station Sirhali, District Tarn Taran.

2. The translated version of the FIR is reproduced below:-

“SHO Police Station, Sirhali, Jay Hind, Today I SI along with LR/ASI Manjinder Singh 1071/TT, LR/SI Sahib Singh 944/TT, PHG Gurjant Singh 4783 along with laptop printer and accessories with operators Senior Constable Sharanjeet Singh No.72/TT, were on government vehicle Scorpio bearing No.PB.65.BG.6188 which was being driven by Senior Constable Jobarjangbahadar Singh No.4/747 and were on patrolling duty in search of anti social elements and from the office of CIA Tarn Taran (Camp Seron) were going towards village Naushehra Pannua, Sarhali, Suhawa, Chohla Etc. and when police party reached near the bridge over the drain at village Suhawa then from the footpath of water canal one haircut young person holding one black coloured plastic bag contained something in his right hand was seen coming and

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who was on seeing the police party in the government vehicle in uniform turned backward and started moving hurriedly and thrown away the plastic bag black in colour containing something on the side of the footpath. that I ASI after getting the vehicle stopped on the basis of suspicion with the help of other officials got him apprehended after encircling him and inquired about his name and address and he disclosed his name as Baldev Singh alias Bau son of Jaswant Singh son of Dharam Singh, resident of Village Naushehra Pannua. At the spot the public witness was tried to join into the police party but no one could be found. Thereafter accused Baldev Singh above said after lifting the plastic bag thrown by him presented the same before me ASI for checking and on checking the opium was got recovered which was got weighed with the help of electronic weighing machine and the total weight along with the plastic bag turns out to be 01 kg of opium. That the same was kept in the one plastic box and parcel was prepared and parcel was got sealed by with my stamp SS. The sample stamp was prepared on the blank white paper. Stamp after used was handed over to ASI Manjinder Singh 1071/TT. Since accused Baldev Singh above said by keeping 1 kg of opium in his possession has committed an offence under Sections 18B/61/85 NDPS Act, thus, after getting the ruqa typed in the laptop and after taking its print out the same is being sent to the police station for registration of case by hand PHG Gurjant Singh 4783. After registering the case, the FIR number be informed. After issuing the special reports, the same are being sent to the Senior Officials and Illaqa Magistrate. Control room be informed. I ASI along with other officials is busy in investigation at the spot. Today within the jurisdiction of at bridge over the drain at village Suhawa, time 02:45 pm, Sd/- Sukhdev singh SI, C.I.A, Tarn Taran, dated 06.08.2024."

3. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in this case. He further submits that allegedly, 01 kg. opium was recovered from the petitioner which is non-commercial quantity. Additionally, while effecting the recovery, the mandatory provisions of Section 50 of NDPS Act were complied with. The petitioner has undergone an actual custody of 04 months and 08 days.

4. *Per contra*, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. He submits that

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the petitioner is a habitual offender and that there is another criminal case under the NDPS Act registered against him, in which he is on bail. He, on instructions, submits that charges were framed on 11.12.2024 and out of 08 total prosecution witnesses, none has been examined. He however, submits that in view of 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 an actual custody of 04 months and 08 days and there is another criminal case under the NDPS Act registered against him, however, in that case, he has been granted the concession of bail. 01 kg. opium which was recovered from the petitioner is of non-commercial quantity. Charges were framed on 11.12.2024 and out of 08 total prosecution witnesses, none has been examined. Therefore, further incarceration of the petitioner will not serve any purpose.

7. It would be unjust to keep him behind bars looking at the condition of the jails which are not conducive for rehabilitation process and detaining the accused persons in jails would also tantamounts to 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”**.

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8. As regards the submission of learned State counsel that petitioner is involved in other criminal case(s), reference is placed upon the judgment of the Hon'ble Supreme Court in **Maulana Mohd. Amir Rashadi Vs. State of U.P. and another, 2012 (2) SCC 382** in which, it is held 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/another case(s). The relevant portion of the said judgment is reproduced herein-below:-

“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.”

9. 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.

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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.

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. 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.

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

(KIRTI SINGH)
JUDGE

18.12.2024
Ramandeep Singh

Whether speaking / reasoned	Yes/No
Whether Reportable	Yes/No