

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-62923-2023
DECIDED ON: 24.01.2024

HARPINDER SINGHPETITIONER

VERSUS

STATE OF PUNJABRESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Kashish Aggarwal, Advocate
for the petitioner.

Mr. Ramdeep Partap Singh, Sr. DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.51, dated 07.11.2021 (Annexure P-1), under Sections 21, 22 and 25 of the NDPS Act, 1985, registered at Police Station Kotli Surat Mallian, District Batala.
2. Learned counsel for the petitioner submits that the petitioner was not initially named in the FIR and has been nominated as an accused only on the basis of disclosure statement made by co-accused Amritpal Singh @ Kaka and no recovery whatsoever has been effected from the conscious possession of the petitioner. He also contends that investigation in the present FIR stands complete, challan stands presented on 05.07.2022 and the charges have been framed on 19.07.2022 and the trial is moving at snail's pace.
3. On the other hand, learned State counsel has produced the custody certificate of the petitioner, which is taken on record, to demonstrate that he has suffered incarceration for a period of 11 months & 05 days and he is involved in more than four cases. He seeks dismissal of the instant petition primarily on the

ground that subsequently during the investigation, much more contraband was recovered from the possession of other co-accused but could not controvert the fact that nothing has been recovered thereafter from the petitioner and apart from that there is no other incriminating material except the disclosure statement against the petitioner.

4. Looking into the totality of the facts and circumstances and also the fact that challan stands presented on 05.07.2022; charges have been framed on 19.07.2022; out of total 21 prosecution witnesses, only 5 witnesses have been examined till date added with the fact that no recovery whatsoever has been effected from the conscious possession of the petitioner and the conclusion of trial will take long time.

5. This Court is sanguine of the fact that according to the proposition settled by the Apex Court that keeping somebody behind the bars, till his guilt is proved, for an indefinite period amounts to infringement of his right to life and liberty, as enshrined under Article 21 of Constitution of India and is against the principle "*bail is a rule and jail is an exception*".

6. As far as the pendency of other cases is concerned, as has been stated by learned State counsel, no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would lend the petitioner in a situation of denial the concession of bail.

7. In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.
8. In the afore-said terms, the present petition is hereby allowed.
9. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

24.01.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>