

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

Sr. No.204

**CRM-M-29921-2020
Date of Decision: 05.11.2020**

GURTEJ SINGH

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr. Arshdeep Singh Brar, Advocate,
for the petitioner.

Ms. Bhawna Gupta, Assistant Advocate General, Punjab.

ARCHANA PURI, J.

The matter has been taken up through video conferencing in the light of COVID-19 pandemic.

Medical status report as well as custody certificate of the petitioner have been filed. The same are taken on record.

The present petition has been filed for grant of interim bail to the petitioner in case bearing FIR No.30 dated 11.02.2019 under Section 15 and 25 Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station City Moga.

As per the version of the prosecution, on 11.02.2019, 180 kilograms of poppy husk has been recovered from the possession of the accused.

Now, it is submitted by learned counsel for the petitioner that the petitioner is HIV positive and is in bad shape of health in the jail. He is in custody for the last more than one and a half years and it was in jail that, he was detected HIV positive. Now, it is submitted that as per the

instructions of High Powered Committee of this Court, which was constituted in pursuance of the direction given by Hon'ble Apex Court, the petitioner is required to be released on bail, as per Clause 8.1(a). It is also submitted that at the behest of the petitioner, earlier a bail application was filed before the Judge, Special Court, Moga, but the same has been wrongly dismissed, while overlooking the instructions of the High Powered Committee.

Learned State Counsel resists the claim for bail, as she submits that as per the latest medical status report by way of affidavit of Mr. Rajdeep Singh Brar, Deputy Superintendent, Central Jail, Faridkot, which has been filed today, the medical condition of the petitioner is stable and his vitals are within normal limits. He is provided assistance in the jail as per his ailment. Also, it is submitted that as per the reviewed High Powered Committee instructions, issued on 07.08.2020, the case of the petitioner is not covered, as there is no Clause 8.2, as mentioned in the fresh instructions. However, she submits that in the affidavit of Mr. Rajdeep Singh Brar, Deputy Superintendent, Central Jail, Faridkot, it has been wrongly stated that the petitioner falls under the category of disease, as mentioned in Clause 8.2 of the instructions, as issued on 07.08.2020, though it should have been of 02.05.2020.

Perusal of the High Powered Committee instructions dated 02.05.2020 reveals that Clause 8 of the instructions, deals with extended criteria and procedure for release of under-trial prisoners and the relevant clause 8.2 reads as hereingiven:-

“All under-trial prisoners in custody suffering from the following chronic diseases or pre-existing conditions, and under treatment for the same for at least one year prior to the date of release:

- Chronic diabetes;
- HIV;
- Serious neurological issues (not simple depression);
- Chronic lungs disease;
- Severe asthma;
- Serious heart conditions;
- Pregnant women may also be considered.

Whether the under-trial falls under the above category or not shall be as per the report of the jail Medical Officer and further certified by an SMO or the CMO.”

However, the aforesaid instructions were again reviewed in the meeting held on 07.08.2020 and as per the same, there is no Clause 8.2 relating to the criteria for release of under-trial prisoners in custody *vis-a-vis* the various medical ailments, as stated in the earlier instructions. However, Clause 8.1 of the reviewed instructions reads as under:-

“8.1 After examining the various issues involved, the Committee felt that it is desirable to further reduce the prison population by around 4000-5000 prisoners. However, as explained by ADGP (Prisons), convict prisoners cannot be considered for further release as they are required for day-to-day prison administration. Hence, it was decided that, in addition to the criteria approved by HPC in previous meetings, the following category of prisoners shall be considered for release on interim-bail of 6 weeks at a time, extendable till such time as the notification under the Epidemic Diseases Act, 1897 is in force:

(a) NDPS Act Cases: All under-trial prisoners other than those under custody in commercial quantity cases may be considered for release on interim bail, except the following:

- *Under-trial has more than three (3) NDPS cases registered against him/her;*
- *Under-trial prisoner is also accused for offences under Section 302 IPC, 307 IPC, Arms Act, kidnapping for ransom, assault on public servant or for intimidation of informers/witnesses in any of the cases registered against him.*
- *Under-trial is a foreign national.”*

Thus, it is evident from the instructions that the aforesaid instructions issued vide meeting dated 07.08.2020, are in addition to the criteria approved by High Powered Committee, in previous meeting. Thus, Clause 8.2 of the previous instructions dated 02.05.2020, is also to be taken

into consideration.

As per the medical record of the petitioner, he is suffering from HIV and he has been provided medical aid in the jail, as per paragraph No.4 of the affidavit of Deputy Superintendent, which is filed today. Though the vitals are within normal limits and the said petitioner is given treatment since 12.03.2019 and his condition is stated to be medically stable, but however, his case is covered under Clause 8.2 of the previous instructions, which have not been wiped off by the subsequent instructions.

Thus, in the light of the COVID-19 situation, I deem it appropriate to grant interim bail to the petitioner, namely, Gurtej Singh. Consequently, he is ordered to be released on interim bail for a period of 8 weeks, subject to his furnishing bail bonds to the satisfaction of the trial Court.

Accordingly, the petition stands disposed of.

(ARCHANA PURI)
JUDGE

05.11.2020
Himanshu

Whether speaking/reasoned	Yes
Whether reportable	No