

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

**CRM-M-53112 of 2019 (O&M)
DATE OF DECISION : 21.08.2020**

Gurcharan Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Gurpal Singh Sandhu, Advocate,
for the petitioner.

Mr. Gaurav Garg Dhuriwala, Sr. DAG Punjab.
(Presence marked through video conference)

ARUN MONGA, J. (ORAL)

1. The petitioner is seeking regular bail in FIR No. 103 dated 01.06.2018, registered under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station Lambi, District Sri Muktsar Sahib.

2. Per FIR, on 01.06.2018, while on checking, on suspicion, the police party intercepted a motor cycle with three persons sitting on it, who tried to flee. From the search of person sitting in the middle i.e. petitioner, 25 bottles of Onerex Syrup containing codeine phosphate of 100 mls each and 250 tables of carisoprodol Carisoma were recovered from the polythene bag held by him. Case was registered and petitioner along with his accomplice were arrested.

3. Learned counsel submits that the petitioner is in custody since 01.06.2018. According to him, the petitioner is an agriculturist, having a wife and two minor children and they are living in penury after the arrest of the petitioner as he is the only bread winner of the family. According to him, the petitioner is not involved in any other case. He further submits that

investigation is over, challan has been filed, but there is no headway in the trial, which is going on at snail pace and refers to zimni orders passed by the trial Court from time to time. Especially in the pandemic scenario, there is no likelihood of trial being concluded in time, he contends. He relies on order dated 11.08.2020 passed by a Coordinate Bench of this Court in CRM-M-11445 of 2020(Nikka Ram @ Nikka Vs. State of Punjab), wherein, in the cases of recovery of contraband drug exceeding the commercial quantity, the accused therein were released on regular bail considering the fact that the accused therein were not involved in any other case of similar nature and the aspect of delay in trial due to Covid-19 pandemic.

4. On the other hand, learned State counsel opposes the bail plea. He submits that the recovery falls within the definition of commercial quantity and applicability of Section 37 of the NDPS Act disentitles the petitioner to seek the concession of bail unless, of course, this Court is of the opinion that there are reasonable ground to believe that petitioner is not guilty of such an offence as attributed to him in the present case and he is not likely to commit similar offence, if granted the concession of bail. He relies on Apex Court judgment in **State of Kerala etc. Vs. Rajesh etc. SLP No. 7309-7312 of 2019, decided on 24.01.2020**. On a query of Court, he, however, admits that petitioner is not involved in any other case of similar nature; he has been in custody since 01.06.2018 and that there is not much progress in trial due to Covid-19 pandemic.

5. The petitioner is in custody almost for the past more than two years. The zimni orders show that there is no headway in the trial and is not likely to commence or conclude anytime soon due to covid-19 pandemic. Courts are currently working with restrictions and taking up only urgent matters. The petitioner is having family to maintain and is having 4 acres of

land in the village. In the circumstances, there is no apprehension of his fleeing from trial, in case he is released on bail.

6. So far as contention of learned State counsel is concerned, having regard to the nature of allegations contained in FIR, I am of the opinion that prescribed medicines recovered from the petitioner being “onerex syrup” is available at Chemist shops of course to be purchased on prescription, there is strong likelihood that the same is taken for personal consumption and not for any commercial use, as alleged by the prosecution. As regards petitioner indulging in similar activity if bail is granted to him, a condition can be imposed that in case while on bail, if he is found involved in offence of similar nature, the prosecution would be at liberty to seek cancellation of his bail. Considering the overall scenario, without commenting on the merits of the case, the petition is allowed. Petitioner shall be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/ Duty Magistrate, as the case may be.

7. Petition stands allowed accordingly with liberty to the State, as aforesaid.

August 21th 2020
Jiten

(ARUN MONGA)
JUDGE

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