

In virtual Court

CRM-M-777-2020

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-777-2020 (O&M)
Date of decision: 25.03.2021

Ashwani Kumar

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Jagjit Singh, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

This is 2nd petition for grant of regular bail in FIR No.49 dated 27.02.2018 under Section 15/18/61/85 of NDPS Act, registered at Police Station Sadar Phagwara, District Kapurthala; earlier one was dismissed as withdrawn on 03.04.2019.

Learned counsel for the petitioner submits that new ground for filing this second petition is that a period of more than 03 years has lapsed and out of total 10 prosecution witnesses, only 01 PW has been examined, despite the fact that charges were framed on 27.03.2019.

Brief facts of the case are that the police, while on patrol duty,

found a loaded canter parked on roadside and four persons were sitting in the same. On suspicion, the police party, they tried to run away, however, two persons escaped and two were arrested. First person disclosed his name as Ashwani Kumar i.e. the petitioner and second person disclosed his name as Paramjit Singh @ Sonu. On suspicion, they were given a notice under Section 50 of NDPS Act and DSP, Phagwara was called at the spot. On search of the vehicle, 45 bags each containing 20 kg of poppy husk were recovered i.e. total recovery of 900 kg poppy husk was effected along with 500 grams opium.

Learned counsel for the petitioner further submits that though there are certain moot points regarding the manner, in which the investigation has been conducted, to be decided during the course of trial, however, has laid much emphasis on the fact that charges were framed on 27.03.2019 and till the time, when due to COVID-19 situation, the trial could not proceed, a period of one year has lapsed, as on 22.03.2020, lockdown was imposed and in the intervening period, the trial Court did not make any effort to record any prosecution witness. It is also submitted that as on today, the petitioner has undergone more than 03 years and 22 days of custody and is not involved in any other case.

On 04.03.2020, an explanation was sought from the SSP, Kapurthala as well as trial Court about the delay in recording the prosecution evidence. In pursuance thereof, an affidavit of ACP, Traffic, Amritsar has been filed, in which it is stated that the summons issued to the prosecution witnesses were received back unserved, therefore, statements could not be recorded, as

some of the police officials were transferred from their present place of posting.

The trial Judge has also submitted a report that statements could not be recorded, for the reasons that the summons/bailable warrants were not executed on the police officials. Thereafter, due to COVID-19 pandemic, the work did not start.

Custody certificate dated 24.03.2021 filed in the Court today, is taken on record, a perusal of which shows that the petitioner is not involved in any other case and only inference against him is that recovery was heavy, which is yet to be proved by way of leading evidence, as all the prosecution witnesses are police officials, however, still they are not appearing before the trial Court.

Learned State counsel has submitted that now the Court working in the trial Court is started and out of total 10 prosecution witnesses, only 01 PW has been examined, therefore, it will take some time in conclusion of the trial.

This is sorry state of affairs that the police officials as well as the trial Court is not making endeavour to record the statements of the prosecution witnesses, despite the fact that the trial Court is having power to issue non-bailable warrants against the officials, who, despite service, are not appearing. It appears that a very casual approach is adopted and priority is not given to the cases, where the accused are in long custody.

Without commenting anything on merits of the case, considering the fact that the petitioner is not involved in any other case and he is in custody for the last 03 years and 22 days, I deem it appropriate to grant him concession of regular bail.

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Accordingly, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned.

Petition is disposed of.

**[ARVIND SINGH SANGWAN]
JUDGE**

25.03.2021
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No