

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

**CRM-M No.35906 of 2021 (O&M)
Decided on: 23.11.2021**

Jograj Singh @ Joga

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. S.S. Gill, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this 2nd petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.205 dated 21.09.2019, for offence punishable under Section 22 of the NDPS Act, registered at Police Station City Sunam, District Sangrur.

The new ground for filing this 2nd petition is that as on today, the petitioner has undergone more than 02 years of custody and till date, no prosecution witness has been examined.

Counsel for the petitioner has argued that one of the co-accused namely Shinderpal Singh was granted the concession of regular bail vide order dated 20.07.2021 passed in CRM-M No.50526 of 2019.

The operative part of the said order, reads as under:-

“Learned counsel for the petitioner submits that as per allegations in the FIR, the police party headed by ASI

Hardeep Singh received a secret information that the petitioner along with co-accused are habitual of selling intoxicant substance and they are coming in a Swift car bearing registration No.PB-13BB-5668 and if a barrier is laid, they can be apprehended. Upon this, police party, on seeing the car, stopped it. Driver of the car disclosed his name as Jograj Singh @ Joga and the person sitting on the conductor seat disclosed his name as Shinderpal Singh. A ruqa was sent to the police station and thereafter, the accused persons were arrested. After following the procedure, notice under Section 50 of NDPS Act was served and search of the car was conducted and from its dicci, a plastic bag containing 21000 intoxicant tablets of Clovidol 100 SR, was recovered.

Learned counsel for the petitioner has argued that the petitioner is in custody for the last 01 year, 09 months and 24 days and he is neither owner nor driver of the car, as during the investigation, it was found that the car belongs to one Lakho and co-accused Jograj Singh @ Joga is real nephew of said Lakho and he was driving the car, therefore, it will be a matter of trial whether the petitioner was having knowledge and was in conscious possession of the contraband. It is further submitted that after receiving the secret information, the police has only sent a ruqa, therefore, mandatory requirement under Section 42 of NDPS Act is not made and it will also be a matter of trial whether the proper procedure was followed or not. It is also submitted that the petitioner is not involved in any other case.”

For the sake of brevity, the facts are not reproduced again.

Counsel for the petitioner has further submitted that as per the FIR, the petitioner was the driver of the car, however, it will be a matter of trial whether the provisions under Section 42 of the NDPS Act

have been complied with or not. It is further submitted that the charges were framed on 17.03.2020, however till date, out of 15 PWs, none has been examined and the trial was delayed considerably for a long time due to COVID-19 situation in the country.

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail. A perusal of the Custody Certificate show that the petitioner is in custody for a period of about 02 years, 01 month and 28 days and he is not involved in any other case under the NDPS Act.

Without commenting anything on merits of the case, considering the fact that the petitioner is not involved in any other case; the co-accused of the petitioner is already released on bail and also in view of the fact that despite a lapse of 01 year and 06 months, from the date when the charges were framed, no PW has been examined show that the trial is not likely to be concluded soon, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

23.11.2021

yakub

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No