

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

**CRM-M-32143-2020
Date of decision: 25.11.2021**

Gurcharan Singh @ Tota

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. A. S. Brar, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

(Through video conferencing)

ARVIND SINGH SANGWAN, J. (Oral)

This is the second petition that has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 59 dated 25.06.2017, registered under Sections 15 and 25 of the NDPS Act, 1985 at Police Station Ajitwal, District Moga.

The first petition, bearing CRM-M-50324-2018, was dismissed as withdrawn on 15.01.2019.

Learned counsel for the petitioner submits that the new ground for filing the present petition is that thereafter, the trial has not concluded due to COVID-19 situation in the country and as on today, the petitioner has been in judicial custody for more than 03 years and 05 months.

Learned counsel further submits that vide order dated 14.12.2020, the petitioner was granted the concession of interim bail in view of the COVID-19 situation and the said interim bail is still continuing and the petitioner has not misused the same.

Learned counsel further submits that as per allegations in the FIR, the police party, headed by Inspector Kikkar Singh, received a secret information that petitioner Gurcharan Singh @ Tota and one Manpreet Singh @ Ghogha are habitual of selling intoxicants and are coming in a car while carrying poppy husk and intoxicant powder. On receiving such information, a barrier was laid and the said car was stopped. On inquiry, the driver of the car disclosed his name as Gurcharan Singh @ Tota and the co-passenger disclosed his name as Manpreet Singh @ Ghogha. After giving notice under Section 50 of the NDPS Act, search of the car was conducted in the presence of a DSP and 16 plastic bags were recovered from the rear seat of the car. On checking, the said bags were found to be containing 320 kgs. of poppy husk.

Learned counsel further submits that later on, on the disclosure of the petitioner, another recovery of 80 kgs. of poppy husk was effected from a disclosed place.

Learned counsel further submits that though the alleged recovery effected from the petitioner is of commercial quantity, however, still it will be a matter of trial whether a proper procedure was followed or not as after receiving the secret information, no ruqa was sent to the police station for registration of the FIR as it is clear from the contents of the FIR itself that Inspector Kikkar Singh, on receiving the information, himself started conducting the investigation and arrested the petitioner as well as co-accused.

Learned counsel further submits that co-accused Manpreet Singh @ Ghogha was earlier declared a juvenile and was granted bail, however, now he has been declared an adult and, therefore, the trial will

start again.

Learned State counsel, on the basis of the custody certificate filed today in Court, has not disputed the factual position. As per custody certificate, the petitioner has been in judicial custody for 03 years, 05 months and 18 days and he stands convicted in another FIR of 2010 under the NDPS Act for one year, which he has already undergone; he also stands convicted in an FIR under Sections 379, 411 of the IPC and has already undergone his sentence.

Learned State counsel submits that out of total 19 prosecution witnesses, only 06 witnesses have been examined so far though the charges were framed on 21.12.2017. It is further submitted that the delay in conclusion of trial is because of COVID-19 situation in the country.

After hearing learned counsel for the parties, without expressing any opinion on the merits of the case, considering the long custody of the petitioner and also in view of the fact that since co-accused Manpreet Singh @ Ghogha, who was earlier declared a juvenile, has now been declared an adult and the trial will start again that may take a long time in its conclusion, the present petition is allowed and order dated 14.12.2020, granting interim bail to the petitioner, is hereby confirmed.

25.11.2021

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No