

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-6280-2022 (O & M)

Date of decision: 31.05.2022

Gurtej Singh

.... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

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

Mr. Kirat Singh Sidhu, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for grant of the regular bail to the petitioner in a case FIR No.30 dated 11.02.2019 under Sections 15, 25 of the NDPS Act, 1985 registered with Police Station City Moga, District Moga.

2. The brief facts of the case are that when the police party was on patrolling duty and reached under the bridge at Kotkapura bye-pass, a secret informer gave information that the present petitioner-Gurtej Singh was working as driver on the truck No.PB-10-GK-6122. He was coming from Singhanwala on the truck on which coal has been loaded and the poppy husk had been concealed in the truck. If a *nakabandi* was done, he could be apprehended. Based on the said information, the present FIR came to be registered. A *nakabandi* was held and the petitioner was arrested and recovery of 180 Kilograms of poppy husk was effected from the aforesaid vehicle.

3. The learned counsel for the petitioner submits that the petitioner was merely a driver of the truck from which the coal bags wherein concealed bags of poppy husk were allegedly found. He further submits that the petitioner was not the owner of the truck. The owner of the truck was one Baltej Singh Gill, who as per information available with the petitioner, was not an accused in the case and the police in order to save the owner, has implicated the petitioner. He further submits that the petitioner has been tested positive for HIV and has been found to be HIV positive vide medical certificate dated 07.09.2020 (Annexure P-5). He contends that the petitioner is in custody since 11.02.2019 and, as such, has undergone almost three years of incarceration and the trial is not nearing completion, and therefore, he deserves the concession of bail.

4. The learned counsel for the State, on the other hand, contends that a huge recovery of 180 Kilograms of poppy husk has been effected from the petitioner, and therefore, he is not entitled to the concession of bail, in view of the bar under Section 37 of the NDPS Act. He, however, admits by referring to the custody certificate dated 30.05.2022 that the petitioner has undergone a total custody period of 02 years 11 months and 23 days as on 30.05.2022. He also concedes that there is no other FIR pending against the petitioner, and as such, he has clean antecedents.

5. I have heard the learned counsel for both the sides at length.

6. The Hon'ble Supreme Court has considered the grant of regular bail in cases involving commercial quantity where there is a delay in the conclusion of the trial. In the case of ***Chitta Biswas @ Subhas Vs. The State of West Bengal Crl. Appeal No(s)245/2020 (@ SLP(Crl.) NO.8823/2019 Decided on 07.02.2020*** where the recovery was of

had been examined, the court granted the concession of bail after the accused had been in custody for approximately 01 year and 07 months.

In the case of ***Amit Singh Moni Vs. State of Himachal Pradesh Crl. Appeal No.668 of 2020 (Arising Out of SLP (Criminal) No.3813 of 2020)*** Decided on ***12.10.2020*** where the recovery was of 3Kg 285 grams of Charas. The Hon'ble Supreme Court granted bail after the accused had undergone a total custody period of 02 years and 07 months.

In the case of ***Vipan Sood Vs. State of Punjab & Anr. CRM-M-20177-2020(O&M)*** Decided on ***25.02.2021*** this Court had granted the concession of regular bail to the petitioner from whom there had been a recovery of 3.8 Kgs of Charas after he had undergone a total custody period of 01 year and 07 months. The NCB filed an SLP against the said order and the same came to be dismissed by the Hon'ble Supreme Court vide 24.08.2021 in Special Leave to Appeal (Crl.) No(s).5852/2021.

In the case of ***Kulwant Singh Vs. State of Punjab, Spl Leave to Appeal (Crl.) No.5187/2021*** Decided on ***10.11.2021*** where the recovery was of commercial quantity looking at the age of the petitioner and incarceration of 02 years the accused was granted the concession of bail.

In the case of ***Mahmood Kurdeya Vs. Narcotics Control Bureau Crl. Appeal No.1570/2021 (@ SLP (Crl.) No.7085/2021)*** Decided on ***07.12.2021*** where the recovery was of huge quantity of contraband the accused was granted the concession of bail after he had undergone 03 years and 03 months of custody.

7. A perusal of the aforementioned judgments would show that the Hon'ble Supreme Court has also considered and granted the concession of regular bail in cases where the accused has undergone a substantial period of custody despite the rigors of Section 37 of the NDPS Act.

Therefore, on account of delay in the conclusion of the trial, the rigors of Section 37 of the NDPS Act can be relaxed to an extent and the prayer of the accused for grant of bail can be considered despite the fact that he has been found in possession of commercial quantity of contraband.

8. The petitioner in the present case is in custody since 11.10.2019 and only 04 of the 13 prosecution witnesses have been examined so far. Therefore, the trial in the present case is not likely to be concluded in the near future. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Gurtej Singh, is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

The petitioner shall appear before the local police station on the first Monday of every month till the conclusion of the trial and furnish an undertaking each time that he is not involved in any other crime other than the present case.

(JASJIT SINGH BEDI)
JUDGE

May 31, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No