

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-7857-2022 (O & M)

Date of decision: 04.04.2022

Sukhchain Singh @ Manga

..... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Ms. Riffi Birla, Advocate, for the petitioner.

Mr. Sidakmeet Singh Sandhu, AAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition is for the grant of regular bail to the petitioner under Section 439 Cr.P.C. in a case bearing FIR No.137 dated 26.06.2019 under Sections 21/61/85 of NDPS Act registered with P.S. City Ferozepur, District Ferozepur.

The learned counsel for the petitioner submits that the recovery from the petitioner is 265 grams of heroin which is marginally higher than the commercial quantity of 250 grams. She submits that this weight would include the weight of the polythene bag, therefore it would be debatable whether the quantity recovered is actually commercial or non-commercial. She relies upon the judgment of this Court in '**(i) Pritam Kaur @ Bawi versus State of Punjab, decided on 31.01.2020 in CRM-M-44066-2019, (ii) Satnam Singh @ Sattu versus State of Punjab decided on 17.09.2019 in CRM-M-30672-2019, Hardeep Singh @ Deepa versus State of Punjab, decided on 30.09.2013 in CRM-M-26153-2013 and (iv) Gurpreet Singh versus State of Punjab decided on 23.03.2022 in CRM-**

M-45214-2021'. She further submits that the petitioner is in custody since 26.06.2019. The first bail application of the petitioner was dismissed as withdrawn vide order dated July 20, 2020 (Annexure P-3) passed by this Court. Pursuant thereto the present petition has been filed and during the interim period, no prosecution witness has been examined out of the total 10 witnesses cited by the prosecution. She, thus, contends that the petitioner deserves the concession of regular bail as the trial has made absolutely no progress whatsoever and the petitioner has undergone a total custody period of almost 02 years and 09 months. She relies upon the judgments of the Hon'ble Supreme Court passed in the case titled as '(i) Chitta Biswas alias Subhas versus The State of West Bengal in Criminal Appeal No(s).245 of 2020 @ SLP (Crl.) No.8823 of 2019 decided on 07.02.2020', (ii) Mahmood Kurdeya versus Narcotics Control Bureau (Criminal Appeal No.1570 @ SLP (Crl.) No. 7085 of 2021 decided on 07.12.2021, (iii) Amit Singh Moni versus State of Himachal Pradesh (Criminal Appeal No.668 of 2020 arising out of SLP (Criminal) No.3813 of 2020 decided on 12.10.2020 and the judgment passed by the Allahabad High Court in the case titled as 'Anokhi lal versus State of U.P. (Criminal Bail Application No.6869 of 2019 decided on 30.03.2022)'.

The learned State counsel submits that the recovery effected from the petitioner is of commercial quantity and, as such, the petitioner does not deserve the concession of regular bail. He, however, does not dispute the period of custody undergone by the petitioner.

I have heard the learned counsel for both the parties.

Admittedly, the recovery effected from the petitioner is of 265 grams of heroin which is marginally above the commercial quantity of 250 grams, which would, thus, be a matter of adjudication during the course of trial as to whether the recovery was actually of commercial or non-commercial quantity. However, given the facts that the petitioner has been in custody since 26.06.2019, has no criminal antecedents and the quantity of recovery being a borderline case, the further incarceration of the petitioner is not warranted.

Therefore, without commenting upon the merits of the case but keeping in view the fact that the trial is not likely to be concluded in the near future the present petition is allowed and the petitioner is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate concerned.

It is further made clear that if the petitioner indulges in similar offence for which he is currently charged, the State would be at liberty to move an application for cancellation of bail.

Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

April 04, 2022
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

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