

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

212

CRM-M-16333-2020 (O&M)

Date of Decision: 30.03.2022

Major Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Amit Arora, Advocate,
for the petitioner.

Mr. Anmol Singh Sandhu, AAG, Punjab,
assisted by ASI Narinder Singh.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered against him vide FIR No.144 dated 14.07.2018 at Police Station Sadar Patti, District Tarn Taran, under Section 21 of the NDPS Act (Section 25 of the NDPS Act added later on).
2. The FIR in question was lodged pursuant to an application submitted by SI Ajay Bharti, Platoon Commander, BOP, Kulwant E Coy, 77 BN, BSF, wherein it is alleged that on 14.07.2018 at about 9.15 AM, Major Singh (petitioner) alongwith labourer Gurwinder Singh had entered Gate No.176/M on a tractor bearing registration No.PB-07L3360 for farming. Upon his return at about 12.30 PM (noon), the tractor was again checked and its speedometer assembly was found to be loose, which raised suspicion. However, Gurwinder Singh managed to escape. Upon

- checking the speedometer compartment, 550 grams of 'heroin' was recovered. The tractor was seized. Thereafter, Major Singh alongwith his tractor and the recovered contraband was produced before SI Sukhchain Singh, Police Station Sadar Patti for necessary proceedings.
3. Learned counsel for the petitioner has submitted that he has falsely been implicated in the present case and that it is a case where the recovery had initially been effected by an official of the rank of Constable, which is against the spirit of law and that in these circumstances, the entire recovery stands vitiated. Learned counsel has further submitted that the petitioner has been behind bars for a substantial period of 3 years & 8 months and since trial is proceeding at a snail's pace, he deserves the concession of bail.
 4. Opposing the petition, learned State counsel has submitted that it is a case of chance recovery, when the BSF officials checked the tractor of the petitioner while he was returning back from his fields situated near International Indo-Pak Border and that immediately after the said chance recovery, the seized contraband, the tractor as well as the petitioner were produced before SI Sukhchain Singh, Police Station Sadar Patti and in these circumstances, no infirmity can be found in the procedure as regards the recovery of contraband. It has further been submitted that since the recovered contraband falls in the category of 'commercial' quantity, no case for grant of bail is made out. Learned State counsel has, however, informed that the petitioner as on date has been behind bars since the last about 3 years, 8 months & 16 days and that as on date 3

PWs out of cited 16 PWs have been examined. It has also been informed that the petitioner is not involved in any other case.

5. I have considered rival submissions addressed before this Court.
6. The petitioner, who was apprehended on 14.07.2018, has been behind bars for a substantial period of about 3 years, 8 months & 16 days is stated to be having a clean record. The conclusion of trial is likely to consume time inasmuch as only 3 PWs out of the cited 16 PWs have been examined so far.
7. Hon'ble the Supreme Court vide order dated 07.02.2020 passed in Criminal Appeal No.245 of 2020 titled 'Chitta Biswas Alias Subhas Vs. The State of West Bengal' while dealing with a matter regarding grant of bail to an accused charged with allegations of being in possession of 'commercial' quantity of contraband, granted bail mainly on the ground that the petitioner has been in custody since 21.07.2018 and only 4 out of the cited 10 PWs had been examined.
8. In another case i.e. Criminal Appeal No.1570 of 2021 titled 'Mahmood Kurdeya Vs. Narcotics Control Bureau' pertaining to a case of recovery of 'commercial' quantity of 'Tramadol', where the accused had been in custody for about 3 years & 3 months, Hon'ble the Supreme Court vide its order dated 07.12.2021 was pleased to grant bail while making the following observations:

“.....What persuades us to pass an order in favour of the appellant is the fact that despite the rigors of Section 37 of the said Act, in the present case though charge sheet was filed on 23.09.2018 even the charges have not been framed nor trial has commenced. The manufacturer who sold the drugs to the appellant during the sunset clause himself has been granted bail.”

9. In yet another case i.e. Criminal Appeal No.668 of 2020 titled 'Amit Singh Moni Vs. State of Himachal Pradesh', Hon'ble the Supreme Court vide its order dated 12.10.2020 was pleased to grant regular bail pertaining to a case of recovery of 'commercial' quantity of contraband on account of custody of 2 years and 7 months.
10. Bearing in mind the long custody period of the petitioner and also that the petitioner, otherwise, has a clean record and the conclusion of trial is likely to consume time as till date only 3 PWs out of the cited 16 PWs have been examined, the petition is accepted and the petitioner is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

30.03.2022

Vimal

(GURVINDER SINGH GILL)
JUDGE

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