

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

CRM-M-19342-2022
Date of Decision:-17.8.2022

Jaswant Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by :-

Mr. Harsh Raheja, Advocate
for the petitioner.

Ms. Samina Dhir, DAG, Punjab.

KARAMJIT SINGH, J.

Prayer is for grant of regular bail in case having FIR No.1 dated 1.1.2020 registered under Section 22 NDPS Act at Police Station STF, Phase-IV, Mohali District SAS Nagar.

Counsel for the petitioner submits that the first bail application filed vide CRM-M-25700-2020 was withdrawn on 7.9.2020. The counsel for the petitioner further submits that the petitioner has been falsely implicated in the present case. That as per the allegations recorded in the FIR, the police apprehended Swift Desire car No.PB-13-BB-2618, which

was driven by co-accused Harvinder Singh @ Buntty and co-accused Sukhchain Singh was sitting along side the driver while petitioner was sitting on the rear seat of the car and on checking of the said car 20 boxes of Tramadol Hydrochloride 100 mg having 10 strips each containing 50 tablets were recovered bearing batch number, date of manufacture and expiry date. The said recovery was effected from the dickey of the car. The counsel for the petitioner submits that the petitioner was having no concern with the said car and is in custody since the registration of the FIR and his custody period comes out to be more than 2 years and 7 months and he is not involved in any other criminal case. The counsel for the petitioner further contends that it is a matter of evidence as to whether the aforesaid contraband is considered to be recovered from the conscious possession of the petitioner. The counsel for the petitioner further contends that similarly situated co-accused Sukhchain Singh was granted regular bail by the Co-ordinate Bench of this Court vide order dated 20.5.2022 (Annexure P-6). The counsel for the petitioner further submits that it will take time for the final disposal of the case and as such prayer is made that petitioner be granted regular bail.

The present petition is contested by the State counsel, who submits that the contraband recovered from the car in which the petitioner was travelling, comes under commercial quantity and as such rigors of Section 37 of NDPS Act are applicable to the instant case and in the given circumstances long incarceration is no ground to give benefit of bail to the petitioner. In support of her contention, the State counsel referred to recent order dated 19.7.2022 passed by the Hon'ble Supreme Court in **Crl. Appeal Nos.1001-1002 of 2022** titled as **Narcotics Control Bureau vs. Mohit**

Aggarwal. However, the State counsel has not refuted the fact that co-accused has been given concession of regular bail by the Co-ordinate Bench of this Court vide order dated 20.5.2022 (Annexure P-6) and that the trial is under progress.

I have considered the submissions made by the counsel for the parties.

As per the prosecution version commercial quantity of medical intoxicants were recovered from the boot of the car, which was driven by Harvinder Singh @ Bunty, while the petitioner was sitting on the rear seat and co-accused Jaswant Singh was sitting along side the driver. As per the counsel for the petitioner, the said car was not owned by the petitioner.

Admittedly similarly situated co-accused namely Sukhchain Singh was granted regular bail by the Co-ordinate Bench of this Court of vide order dated 20.5.2022 (Annexure P-6). While passing order Annexure P-6, the Co-ordinate Bench of this Court observed as follows:-

“The petitioner has been in custody since 01.01.2020. Out of 15 prosecution witnesses, 08 witnesses are yet to be examined. The petitioner has since been acquitted in another case registered against him under the NDPS Act. All these facts persuade this Court to grant bail to the petitioner despite the rigors of Section 37 NDPS Act in the present case. Therefore, no useful purpose would be served by keeping the petitioner behind the bars.

In view of the above, without commenting anything on the merits, lest it should prejudice the case of either side, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail and surety bonds to the satisfaction of the learned trial Court/Duty Magistrate.

However, it is made clear that in case, the petitioner is found indulged in any other case under the NDPS Act, the prosecution would be at liberty to seek cancellation of his bail in this case”.

In the instant case, the custody period of the petitioner comes out to be more than 2 years and 7 months and the petitioner is having no criminal antecedents. No doubt the trial is going on, but it will take considerable time for the trial to conclude.

The Hon’ble Apex Court has clarified in numerous judgments that the liberty granted by Part-III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. The Hon’ble Supreme Court in **Supreme Court Legal Aid Committee vs. Union of India (1994)6 SCC 731**, held that undertrials cannot indefinitely be detained pending trial. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the Court would ordinarily be obligated to enlarge him on bail.

In the light of the aforesaid settled proposition of law, keeping in view the fact that the petitioner is in custody since long and the trial is not going to terminate shortly and similarly situated co-accused being already released on regular bail, this Court is of the view that the petitioner is entitled to grant of bail despite the fact that embargo provided under Section 37 of NDPS Act is applicable in the instant case.

Consequently without commenting anything on the merits of the case, the present petition is allowed and the petitioner is ordered to be

released on bail subject to his furnishing bail and surety bonds to the satisfaction of the trial Court/CJM/Duty Magistrate concerned.

In case the petitioner is found involved in any other case under NDPS Act, in the near future, the prosecution would be at liberty to seek cancellation of his bail.

17.8.2022
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No