

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

212

CRM-M-23904-2021(O&M)
Date of decision: 29.10.2022

KAKA SINGH

....Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Hitesh Verma, Advocate
for the petitioner.

Mr. M.S. Joshi, Additional AG Punjab.

AMAN CHAUDHARY. J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in respect of FIR No.230 dated 21.06.2019, under Sections 22/25/29 of the NDPS Act, registered at Police Station City Barnala.

Learned counsel contends that the petitioner is in custody since 21.06.2019, when he was apprehended at spot and the alleged recovery of 2400 tablets containing Tramadol was recovered from the dickey of the scooter on which the petitioner was sitting. He submits that the recovery was from the private vehicle which was not in the ownership of the petitioner. He further submits that charges were framed on 26.11.2019, but none of the witnesses out of a total of 19 has been examined till date. He would submit that there is non-compliance of Section 42 of the NDPS Act inasmuch as the secret information, based on which the raid was conducted, was neither reduced in writing nor sent to the immediate superior, as has been envisaged by the aforesaid provision. He relies on the judgment in the case of **Boota Singh Vs. State of Haryana,**

Criminal Appeal No.421 of 2021 decided on 16.04.2021. He further submits that there are 03 cases pending against the petitioner of non-commercial quantity of contraband, wherein in one case he has been granted bail and in other two cases he was acquitted. He relies on judgment in the case of '**Varinder Singh @ Bagga Vs. State of Punjab**', decided on 20.05.2022 passed in CRM-M-3193-2022, wherein also bail was granted on account of there being violation of provisions of Section 42 of the NDPS Act, despite the factum of the petitioner being involved in other cases. He further submits that the co-accused of the petitioner were granted anticipatory bail vide orders dated 18.10.2019 passed in CRM-M-33266-2019 and CRM-M-35442-2019 (Annexures P-2 and P-3). He further relies on the orders passed by Hon'ble The Supreme Court in the cases of **Mohammad Salman Hanif Shaikh Vs. The State of Gujarat**, decided on 22.08.2022; **Chitta Biswas Alias Subhas Vs. The State of West Bengal**, decided on 07.02.2020; **Gopal Krishna Patra @ Gopalrusma Vs. Union of India**, decided on 05.08.2022 and **Shariful Islam @ Sarif Vs. The State of West Bengal**, decided on 04.08.2022.

Learned State counsel has produced the custody certificate dated 28.10.2022, which is taken on record. As per the same the custody of the petitioner is 03 years, 04 months and 09 days.

Contrarily, learned State counsel has opposed the bail on the ground that there are 05 cases of similar nature against the petitioner out of which three are still pending. He submits that violation of Section 42 NDPS Act, shall be seen at the time of the trial. He, however, is not able to controvert the fact that out of 05 cases, the petitioner has been acquitted in 02 cases and that though trial has commenced yet none of the witnesses have been examined inspite of the charges having been framed on 26.11.2019.

I have heard learned counsel for the parties.

In view of the facts and circumstances of the case, in particular that the petitioner has been in custody for the last 03 years, 04 months and 09 days; co-accused have been granted anticipatory bail by this Court; though charges had been framed way back on 26.11.2019, however, none of the witnesses have been examined, thus the trial is likely to take a considerable time, his further detention behind bars would not serve any useful purpose, the present petition for grant of regular bail deserves to be allowed.

As a result, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate concerned and subject to him not being required in any other case. The petitioner shall abide by the following conditions:-

1. The petitioner will not tamper with the evidence during the trial.
2. The petitioner will not pressurize/ intimidate the prosecution witnesses.
3. The petitioner will appear before the trial Court on each and every date fixed, unless is exempted by a specific order of Court.
4. The petitioner shall not commit an offence similar to the offence of which, he is an accused, or for commission of which he is suspected of.
5. The petitioner shall not directly or indirectly coerce, induce, threaten or promise to any person acquainted with the facts of the case so as to dissuade him/ her from disclosing such facts to the Court or to any police officer or tamper with the evidence in any manner.
6. The petitioner shall not in any manner misuse his liberty.
7. Any infraction shall entail in withdrawal of the benefit granted by this Court.
8. The petitioner shall furnish his address and mobile number to the Trial Court forthwith and shall not change the same till the conclusion of the trial and in case for any reason, the petitioner seeks to change any of the aforesaid, the same shall be done only with prior intimation to the learned Trial Court, stating the reason for the same.
9. The petitioner shall deposit his passport, if any, with the Trial Court

forthwith and in case, he does not have the passport, he shall furnish a specific affidavit in this regard.

It is made clear that in case of non-adherence of any of the aforesaid conditions, the State shall be at liberty to seek cancellation of bail as granted to the petitioner by this order.

In view of the above, this Court makes it clarified that the observations made herein above are limited for the purpose of present proceedings and would not be construed as any opinion on the merits of the case and the trial would proceed independently of the aforesaid observations.

(AMAN CHAUDHARY)
JUDGE

October 29, 2022
S.Sharma(syr)

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