

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-22712-2022

Date of decision : 27.05.2022

Davinder Kumar @ Lovely

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Jitender Singh Dadwal, Advocate
for the petitioner.

Mr.Sukhbeer Singh, AAG, Punjab.

VIKAS BAHL, J.(ORAL)

This is a first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.0218 dated 28.08.2018 registered under Sections 21, 25, 29 of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (in short “NDPS Act”) at police Station Sadar Tarn Taran, District Tarn Taran.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 28.08.2018 (3 years 8 months and 23 days) and the challan has already been presented and out of 14 prosecution witnesses, 6 witnesses have been examined and 8 witnesses are yet to be examined, thus, the trial is likely to take time. It is further submitted that the petitioner is not involved in any other case. It is stated that there is no independent witness in the present case. Learned counsel for the petitioner has submitted that keeping in view the custody of the petitioner, he deserves

violative of the right of the petitioner enshrined under Article 21 of the Constitution of India. Learned counsel for the petitioner has relied upon a Division Bench of this Court in **CRM-3773-2019 in CRA-D-198-DB-2017**, in support of his contentions.

Learned State counsel, has opposed the present petition for regular bail and has submitted that recovery from the present petitioner is of 1 kg of heroin which is commercial quantity. The other facts have not been disputed. Learned State counsel has placed on record the custody certificate as per which the custody period stated by the petitioner, stands reiterated.

This Court has heard learned counsel for the parties and has perused the paper book.

The Division Bench of this Court in CRM-3773-2019 in CRA-D-198-DB-2017, vide a detailed judgment dated 12.01.2022, has observed as under:-

1. The issue at hand is the consideration for suspension of sentence in cases under the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'Act'). Section 37 of the Act is reproduced herein below:-

“ 37. Offences to be cognizable and non-bailable-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.”

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27. Thus we find that in the year 1994, the Supreme Court held that a person who had undergone five years of pre-convict custody was entitled to be released on bail, on the touchstone of Article 21 of the Constitution of India. Though this judgment related to undertrials and only one time directions were issued, however, the directions in no way can be said to be against the legislative intent but are in furtherance of Article 21 of the Constitution of India. Therefore, it will also not be inappropriate if similar principles are followed with some variations and modifications in cases relating to convicts who are languishing in jails for the reasons that their appeals are not likely to be heard for a considerable period.

28. Then in P. Ramachandra Rao, where the accused was found to have amassed assets disproportionate to his known sources of income and the charge-sheet was filed for offences under Sections 13(1) (e) read with Section 13(2) of the Prevention of Corruption Act, 1988, the constitutional bench of the Supreme Court stressed upon speedy trial at the touchstone of Articles 21, 19 and 14 and the Preamble of the Constitution as also from the Directive Principles of State Policy.

29. Then we have Surinder Singh @ Shingara Singh, where the convict was awarded the sentence of life imprisonment for an offence under Section 302 IPC and the interim order granting him bail had been made absolute. However, the Supreme Court again stressed upon speedy trial and specifically observed that the difficulty arises when the appeal preferred by such a convict cannot be disposed of within a reasonable time.

30. Then came Tule Ram, wherein a full bench of this Court after perusing the data provided with regard to the pendency or disposal of appeals under the Act went into the question as to what was the extent of the power for suspension of sentence which could be exercised by the High Court while dealing with the applications for suspension of sentence in appeals under the NDPS Act. The bench held that the Appellate Court had no power to suspend sentence during pendency of the appeal and that the Act makes no provision

for post-conviction suspension of sentence. The exception, however, that was carved out was that when there is delay in disposal of the appeal which is not attributable to the convict, the Court may pass such orders as the convict may be entitled to in view of the provisions of Article 21 of the Constitution of India.

31. Thereafter, in Daler Singh, where the recovery was of 35 kg of poppy husk and the convict had undergone 7 years out of the total sentence of 12 years awarded under the Act, a division bench of this Court had suspended the sentence and had also laid down some principles for releasing the convicts under the NDPS Act at the touchstone of Article 21 of the Constitution of India.

32. Then in Dalip Singh, which was a case of murder, certain guidelines had been laid down by a full bench of this Court for the purpose of bail during trial and for suspension of sentence pending appeal in the spirit of Article 21 of the Constitution of India while considering various other factors of the case.

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35. Then we have K.A. Najeeb, wherein the accused was facing trial under UPA, IPC and Explosives substances Act, the Supreme Court granted bail after 4 years of custody while holding that 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 courts would ordinarily be obligated to enlarge them on bail.

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37. Then in Pawan Kumar and another, where the recovery was of 15.5 kg of opium, the Supreme Court upheld the decision of this Court granting suspension of sentence to one of the convicts who had undergone 7½ years out of the total sentence of 15 years awarded under the Act.

38. Then in Mahamood Kurdeya, where the recovery was of 50 kg 800 grams of contraband from the Syrian national and who had undergone 3 years 3 months of custody, the Supreme Court had granted bail on the ground that even the trial had not been commenced till now.

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41. The salient factor in all the cases relied upon by the learned counsel for the respondents is that in none of those cases the convict/accused could even argue that his case was covered under Article 21 of the Constitution of India. None of the cases fell under the categories enumerated either in Supreme Court Legal Aid

Committee or Daler Singh. The maximum custody in these cases was of Lokesh Chadha and Ratan Kumar Vishwas where also they had undergone less than 5 years of the sentence. In none of these cases, the Supreme Court disagreed with even one of the decisions relied upon by the learned counsel for the applicants-appellants. Thus, it has to be concluded that there is no divergence of opinion as sought to be projected by the learned counsel for the respondents-States. Where the convict/accused is not able to bring his case within the parameters of Article 21 of the Constitution of India the stringent provisions of Section 37 of the Act have to be applied.

42. In these circumstances, we would now examine all the cases under the parameters laid down in Supreme Court Legal Aid Committee and Daler Singh, of course with the clear understanding that the directions made therein are not mandatory and have to serve as guidelines. Those cases where the claim for suspension of sentence is made out on the basis of long custody would be disposed of by the present order while those where the claim is not supported by long custody would be segregated and listed for hearing individually. For convenience, the facts of each case are briefly stated.

(1) CRM-3773-2019 in CRA-D-198-DB-2017

Custody certificate dated 27.12.2021 filed by way of affidavit of Yogesh Jain, Deputy Superintendent, Central Jail, Ferozepur is taken on record. As per the custody certificate, the applicant-appellant has undergone actual sentence of more than 8 years & 11 months out of the total sentence of 15 years. Further in another FIR registered under the NDPS Act the applicant-appellant is already on bail. The recovery in the present case was of 14 kg 80 gm of heroin.

Considering the period of incarceration already suffered by the applicant-appellant in the present case and the fact that the appeal is not likely to be heard in the near future and that the present case is covered by Daler Singh's case (supra), we deem it appropriate to suspend the sentence of the applicant-appellant-Bhupender Singh. Ordered accordingly. Bail to the satisfaction of the concerned C.J.M/Illaqua Magistrate/Duty Magistrate.

Application stands disposed of.

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(3) CRM-40754-2019 in CRA-D-956-DB-2016

Custody certificate dated 29.12.2021 filed by way of affidavit of Satnam Singh, PPS, Additional Superintendent, Central Jail, Ludhiana is taken on record. As per the custody certificate, the applicant-appellant has undergone actual sentence of more than 6 years & 5 months out of the total sentence of 12 years. Further the applicant-appellant was 14 days' late from the date of surrender in jail. The recovery in the present case was of 1440 kg of poppy husk.

Considering the period of incarceration already suffered by the applicant-appellant in the present case and the fact that the appeal is not likely to be heard in the near future and that the present case is covered by Daler Singh's case (supra), we deem it appropriate to suspend the sentence of the applicant-appellant-Charan Singh. Ordered accordingly. Bail to the satisfaction of the concerned C.J.M/Illaqua Magistrate/Duty Magistrate.

Application stands disposed of.

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(11) CRM-22787-2021 in CRA-D-1646-DB-2015

Custody certificates dated 29.11.2021 & 03.01.2022 filed by way of affidavit of Sewa Singh, Deputy Superintendent, District Prison (Rohtak), Haryana are taken on record. As per the custody certificate, the applicant-appellant No.2-Virender has undergone actual sentence of more than 8 years & 10 months out of the total sentence of 20 years and the applicant-appellant No.4-Lalan Chaudhary has undergone actual sentence of more than 10 years & 9 months out of the total sentence of 20 years. The recovery in the present case was of 231 kgs of Charas.

Considering the period of incarceration already suffered by the applicant-appellants in the present case and the fact that the appeal is not likely to be heard in the near future and that the present case is covered by Daler Singh's case (supra), we deem it appropriate to suspend the sentence of the applicant-appellant No.2-Virender Singh and the applicant-appellant No.4-Lalan Chaudhary. Ordered accordingly. Bail to the satisfaction of the concerned C.J.M/Illaqua Magistrate/Duty Magistrate.

Application stands disposed of

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(20) CRM-28686-2021 in CRA-D-101-2020

Custody certificate dated 28.12.2021 filed by way of affidavit of Manjit Singh Sidhu, PPS, Additional Superintendent, Central Jail Amritsar is taken on record. As per the custody certificate, the applicant-appellant has undergone actual sentence of more than 6 years & 3 months out of the total sentence of 15 years. The recovery in the present case was of 8 kgs of heroin.

Considering the period of incarceration already suffered by the applicant-appellant in the present case and the fact that the appeal is not likely to be heard in the near future and that the present case is covered by Daler Singh's case (supra), we deem it appropriate to suspend the sentence of the applicant-appellant-Gurdev Singh. Ordered accordingly. Bail to the satisfaction of the concerned C.J.M/Illaqua Magistrate/Duty Magistrate.

Application stands disposed of.

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(24) CRM-11644-2019 in CRA-D-561-DB-2016

Custody certificate dated 29.12.2021 filed by way of affidavit of Satnam Singh, PPS, Additional Superintendent, Central Prison, Ludhiana is taken on record. As per the custody certificate, the applicant-appellant No.2-Gaganjit Singh @ Gogi has undergone actual sentence of more than 6 years & 9 months out of the total sentence of 15 years. Further another FIR has also been registered against the applicant-appellant No.2-Gaganjit Singh @ Gogi under the NDPS Act. The recovery in the present case was of 3700 kgs of poppy husk.

Considering the period of incarceration already suffered by the applicant-appellant in the present case and the fact that the appeal is not likely to be heard in the near future and that the present case is covered by Daler Singh's case (supra), we deem it appropriate to suspend the sentence of the applicant-appellant No.2-Gaganjit Singh @ Gogi. Ordered accordingly. Bail to the satisfaction of the concerned C.J.M/Illaqua Magistrate/Duty Magistrate.

Application stands disposed of.

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(27) CRM-34571 & 34599-2019 in CRA-D-68-DB-2015 (O&M)

Custody certificate dated 29.11.2021 filed by way of affidavit of Surender Kumar, DSP1, Deputy Superintendent, District Prison Kaithal, Haryana is taken on record. As per the

custody certificate, the applicant-appellant has undergone actual sentence of almost 6 years out of the total sentence of 12 years. The recovery in the present case was of 1 kg 700 gms of charas.

Considering the period of incarceration already suffered by the applicant-appellant in the present case and the fact that the appeal is not likely to be heard in the near future, we deem it appropriate to suspend the sentence of the applicant-appellant. Ordered accordingly. Bail to the satisfaction of the concerned C.J.M/Illaqua Magistrate/Duty Magistrate. Recovery of fine shall remain stayed during the pendency of appeal.

Applications stand disposed of.

A perusal of the above judgment would show that after considering the entire law on the subject, it was observed that, in case, the accused person is able to make out a case within the parameters of Article 21 of the Constitution of India, then he deserves the concession of regular bail, even in the face of rigors of Section 37 of the NDPS Act. The above said judgment was passed in the application for suspension of sentence but the principles of law laid down in that case would apply in the present case inasmuch as the petitioner has been in custody since 28.08.2018 i.e. More than 3 years 8 months and 23 days and yet the trial has not been completed and 8 prosecution witnesses are yet to be examined and the petitioner is stated to be not involved in any other case.

Keeping in view the above-said facts and circumstances, more so, the fact that further custody of the petitioner would be a violative of his right under Article 21 of the Constitution of India, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him not being required in any other case. The petitioner shall also 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 witness(s).
3. The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
4. The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.
5. The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail, before this Court.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

(VIKAS BAHL)
JUDGE

May 27, 2022

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No