

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-23697-2022

Date of Decision: September 06, 2022

VIJAY KUMAR @ VIJAY SINGH

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. B. K. Saini, Advocate
for the petitioner.

Mr. Manipal Singh Atwal, DAG, 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.20 dated 03.02.2020 under Sections 21 and 29 of Narcotic Drugs and Psychotropic Substances Act, registered at Police Station City Moga, District Moga.

Learned counsel for the petitioner submits that though the petitioner has been named in the FIR, but he was not arrested from the spot and no recovery has been effected from him. As a matter of fact learned counsel for the petitioner submits that on the date of alleged recovery the petitioner was behind bars in Central Jail, Ludhiana. He has been nominated in the present case based on disclosure statement of co-accused Davinder Singh, from whom 32 grams of heroin was recovered, who has been granted regular bail vide order dated 16.03.2020 (Annexure P-3) by the Judge, Special Court, Moga. The other co-accused in the FIR i.e. Jagmeet Singh and Rajwinder Singh @ Kali from them also 8 grams and 32 grams heroin respectively were recovered, they have been granted concession of regular

bail vide order dated 05.03.2020 and 09.04.2020 (Annexures P-2 and P-4 respectively) by Judge, Special Court, Moga. He further submits that the petitioner is involved in seven FIRs, out of which he has been granted regular bail in three cases (Annexure P-6, P-9 and P-11) by co-ordinate Bench of this Court and in other three cases he has been granted regular bail by the Additional Sessions Judge, Moga (Annexure P-7, P-8 and P-10). Learned counsel for the petitioner submits that the petitioner has been acquitted in one case by the learned Special Court, Moga vide order dated 11.07.2022 in FIR 122 dated 28.07.2015. Learned counsel for the petitioner further submits that in the present case, the petitioner has been in custody since 10.02.2020. He further submits that the challan in this case has been presented on 30.06.2020, however, till date only 01 witness out of 19 witnesses has been examined. He submits that trial will take sufficient long time and prays for grant of regular bail in view of the aforesaid submissions.

Learned State counsel opposes the bail application on the ground that there are number of cases registered against the petitioner. He however, affirms that the petitioner in the present case has been in custody for the last 02 years, 06 months and 28 days as per the custody certificate produced by him in Court today. Learned counsel however, is unable to dispute the fact that the petitioner had been granted concession of regular bail in 06 cases and in the seventh case he has been acquitted and that only 01 witness out of 19 witnesses has been examined

I have heard learned counsel for the parties.

Hon'ble Supreme Court in “**Maulana Mohd. Amir Rashadi vs. State of U.P. and another**”, reported as **2012 (2) SCC 382** has held that

bail application cannot be rejected solely on the ground that the petitioner is involved in another case. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

Similarly, in order dated 28.02.2020 passed in **CRM-M-8026-2020 titled as Lakhwinder Singh @ Lakha Vs. State of Punjab**, Coordinate Bench of this Court had held as under:-

“xxx xxx

2. Ld. Counsel for the Petitioner relies on a decision of a Coordinate Bench of this Court in 'CRM-M No.4584 of 2020 - Binder Kaur alias Goga vs. State of Punjab', to contend that it is unbelievable that a person engaged in the business of Drug Smuggling, will carry the contraband in a transparent Bag. The applicant, in the aforesaid case, in the given circumstances, considering that she was not involved in any other case under the NDPS Act and challan against her had already been submitted, was therefore released on bail by the Bench after she had remained in detention for 02 months and 27 days.

3. The detention undergone by the present Petitioner is much more being 08 months, and he is also not stated to be involved in any other case under the NDPS Act.

4. Challan against the Petitioner has already been submitted and the trial is still pending.

5. As such, considering the long detention already undergone by the present Petitioner and without commenting on other merits of the case, he is ordered to be released on bail to the satisfaction of the Ld. Trial Court concerned.

6. Disposed off.”

The petitioner in this case has been in custody for about 02 years and 07 months. The challan was filed on 30.06.2020 and charges were framed on 28.07.2021. However, only one prosecution witness out of 19 has been examined so far. The co-accused namely, Jagmeet Singh and Rajwinder Singh @ Kali, of the petitioner in the present case who were apprehended on the spot and recovery had been effected from them, have since been granted regular bail by the orders referred to above (Annexures P-2 and P-4). Furthermore, the petitioner also has been granted concession of bail by the co-ordinate Benches of this Court (Annexures P-6, P-9 and P-11) and the Additional Sessions Judge in all other cases (Annexures P-7, P-8 and P-10) and in one case he having been even acquitted, by Special Court, Moga.

Keeping in view the peculiar facts and circumstances of this case that the co-accused has already been granted bail, the petitioner has been in custody for about two years and seven months and only 01 witness out of total 19 Pws has been examined, the trial will thus take a considerable time to conclude, 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.”

It is, however, clarified that nothing stated hereinabove be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made above, which have only been made for the purpose of adjudicating the present petition for grant of regular bail.

September 06, 2022

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**(AMAN CHAUDHARY)
JUDGE**

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No