

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

202

CRM-M-27321-2021
Decided on :22.02.2022

Karan Kumar @ Kud

. . . Petitioner

Versus

State of Punjab

. . . Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL
(Through Video Conferencing)

PRESENT: Mr. Dilpreet Singh Gandhi, Advocate
for the petitioner.

Mr. Sarabjit singh, AAG, Punjab.

VIKAS BAHL, J. (Oral)

The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail in case FIR No. 46 dated 18.02.2019 under Sections 21, 25, 27 and 29 of the NDPS Act, 1985 registered at Police Station Sadar Amritsar, District Amritsar.

Learned counsel for the petitioner has submitted that in the present case, the recovery of 300 gms. of heroin is stated to have been made from the dash board of the car in which the petitioner alongwith two other persons was travelling. One of the said persons was Amritpal @ Kaka. It is submitted that the said Amritpal @ Kaka, whose case is on the similar footing as that of the petitioner, has already been granted regular bail by a coordinate Bench of this Court vide order dated 01.11.2021 in CRM-M-41080-2020. It is further submitted that the

petitioner is neither the owner of the car nor was the driver inasmuch as it is one Jaskaran who was the owner and driver of the car. It is also submitted that the petitioner has been in custody since 18.02.2019 and in spite of the lapse of more than 3 years, the trial is moving at a snail's pace as only 3 witnesses out of 20 witnesses have been examined. It is submitted that the earlier bail application was withdrawn on 16.11.2020 and thereafter, a period of more than 1 year and 3 months have gone by and still no progress has been made in the trial and thus, keeping the present petitioner in further incarceration would be in violation of his right under Article 21 of the Constitution of India as held by the Division Bench of this Court in ***Bhupender Singh Vs. Narcotic Control Bureau***, reported as ***CRA-D-198-DB-2017***.

Learned State counsel has opposed the present application for regular bail. It has been submitted that the petitioner is involved in 4 other cases.

Learned counsel for the petitioner, in rebuttal, to counter the said arguments, has submitted that the petitioner has been granted bail in all the said four cases. He has submitted that as per settled law, it is the facts of the present case which are required to be considered for the purpose of deciding the present bail application. For the said proposition, learned counsel for the petitioner has relied upon judgment dated 16.01.2012 passed by the Hon'ble Supreme Court in Criminal Appeal No.159 of 2012 titled as ***Maulana Mohd. Amir Rashadi Vs. State of U.P. and others*** 2012 (2) SCC 382 reference has been made to

the relevant portion of paragraph 6 which 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.”

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

Co-accused of the petitioner namely Amritpal @ kaka, who is also stated to be travelling in the same car as the present petitioner from which the recovery has been made, has already been granted regular bail by a coordinate Bench of this Court vide order dated 01.11.2021 passed in CRM-M-41080-2021. The custody period of the said Amritpal @ Kaka was 2 years and 8 months when he was granted the said concession of regular bail. The present petitioner is stated to be in custody since 18.02.2019, thus, his custody is more than 3 years and out of 20 witnesses, only 3 witnesses have been examined and thus, the trial is moving at a snail's pace and the same is not likely to be concluded in the near future, moreso, in view of the present COVID-19 pandemic situation.

The Division Bench of this Court in Bhupender Singh's case (*supra*) has held as under:-

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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 Consitution 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 Consitution 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 heroine.

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.

(12) CRM-23396-2021 in CRA-D-89-DB-2015

Custody certificate dated 29.11.2021 filed by way of affidavit of Sewa Singh, Deputy Superintendent, District Prison, Rohtak, Haryana is taken on record. As per the custody certificate, the applicant-appellant has undergone actual sentence of more than 10 years & 1 month out of the total sentence of 14 years. The recovery in the present case was of 104 kg 600 gm 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 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-Mohmmad Kasim. Ordered accordingly. Bail to the satisfaction of the concerned C.J.M/Illaqua Magistrate/Duty Magistrate.

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(16) CRM-7105-2018 in CRA-D-427-DB-2016

Custody certificate dated 29.12.2021 filed by way of affidavit of Iqbal Singh Brar, Superintendent, District Prison Sri Muktsar Sahib, Punjab is taken on record. As per the custody certificate, the applicant appellant has undergone actual sentence of more than 8 years & 5 months out of the total sentence of 15 years. The recovery in the present case was of 57 kgs 982 gms of

heroin alongwith 2 pistols, 52 live cartridges and 3 magazines.

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-Khan 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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(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.

(21) CRM-7811-2021 in CRA-D-156-2020

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 7 years & 3 months out of the total sentence of 12 years. The recovery in the present case was of 10 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-Angrej 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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(26) CRM-22916-2021 in CRA-D-163-DB-2015

Custody certificate dated 29.11.2021 filed by way of affidavit of Shailakshi Bhardwaj, Deputy Superintendent of Prison, District Prison Karna, Haryana is taken on record. As per the custody certificate, the applicant-appellant has undergone actual sentence of more than 8 years & 4 months out of the total sentence of 14 years. The recovery in the present case was of 104 kgs 600 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 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. Ordered accordingly. Bail to the satisfaction of the concerned C.J.M/Illaqua Magistrate/Duty Magistrate.

Application stands disposed of.

(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.”

Keeping in view the abovesaid facts and circumstances, keeping the petitioner in further incarceration would be in violation of his rights enshrined under Article 21 of the Constitution of India, thus, 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 his 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, 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.

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

(VIKAS BAHL)
JUDGE

February 22nd, 2022
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Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No