

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-32515-2021 (O & M)****Date of decision: 11.10.2022**

Abraham Lalrmin Gheta

.... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Prateek Pandit, Advocate, for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.1 dated 09.01.2019 under Section 21, 29 of the NDPS Act, 1985 registered at Police Station Nakodar Sadar, District Jalandhar (Rural).

2. The brief facts of the case are that while the police party was on patrolling duty, the checking of vehicles, cars and buses coming from Jalandhar side began. During the course of the said checking, one private bus coming from Jalandhar side was stopped and one clean-shaven young person came out of the bus, who was carrying a kit bag and started walking towards village Ughi. He was apprehended on suspicion and was asked his name and address. He disclosed his name as Abraham Lalrmin Gheta son of H.P. Lalrimova (petitioner). He stated that he did not know Hindi and Punjabi but knew English. After following the due procedure, he was searched and from his kit bag, 03 kgs. and 70 grams of heroin was recovered.

Pursuant to the disclosure statement of the petitioner, his co-accused Sucha Singh was arrayed as an accused on 13.02.2019 and Section 29 of the NDPS Act was added in the abovesaid FIR. The co-accused Sucha Singh was arrested on 13.02.2019 itself. On the basis of the disclosure statement of Sucha Singh, the third accused-Rajanbir Singh @ Rajbir Singh was arrayed as a co-accused in the abovesaid FIR on 15.02.2019. Rajanbir Singh @ Rajbir Singh was declared a proclaimed offender on 30.05.2019. The said Rajanbir Singh @ Rajbir Singh was arrested in some other case and was brought on production warrant in the present FIR and was formally arrested on 20.07.2021. Pursuant thereto, a supplementary challan qua Rajanbir Singh @ Rajbir Singh was presented on 07.09.2021.

Later on, co-accused Sucha Singh was granted the concession of regular bail on 04.03.2020, who subsequently jumped the proceedings and was declared a proclaimed offender vide order dated 03.02.2022. However, he was arrested by the police on 04.05.2022 and a supplementary challan qua him was filed in the Trial Court on 09.05.2022.

3. The learned counsel for the petitioner contends that the petitioner is in custody since 09.01.2019. Only 04 out of the 21 prosecution witnesses have been examined so far. The mandatory provisions of Section 42 and 50 of the NDPS Act have been violated in the present case vitiating the entire search and seizure. He, thus, contends that the petitioner be granted the concession of regular bail keeping in view the period of custody as also the stage of the Trial.

4. The learned counsel for the State, on the other hand, while referring to the status report/reply dated 16.05.2022 contends that the trial was held up on account of the conduct of the co-accused. Firstly, Rajanbir Singh @ Rajbir Singh had not been arrested and was declared a proclaimed

offender and was arrested on 20.07.2021. Pursuant thereto, the co-accused Sucha Singh, who had been granted the concession of regular bail on 04.03.2020 also absconded and was declared a proclaimed offender on 03.02.2022 and came to be arrested only on 04.05.2022. He, therefore, contends that the delay in the Trial cannot be attributed to the prosecution as is clearly borne out from the tabulated chart in Para 13 of the aforesaid status report/reply detailing the appearance of PWs and proceedings on different dates of hearing.

4. I have heard the learned counsel for the parties at length.

5. Undoubtedly, the delay in the trial is primarily on account of the conduct of the co-accused of the petitioner, namely Rajanbir Singh @ Rajbir Singh and Sucha Singh, who were declared proclaimed offenders at different points in time and were arrested/surrendered subsequently. However, so far as the present petitioner is concerned, he is in custody since 09.01.2019 and as such, has undergone a total period of incarceration of almost 03 years and 10 months.

6. In the case of *'Md. Raja and anr. versus The State of West Bengal (Crl. Appeal No.1293/2022 decided on 22.08.2022)*, the Hon'ble Supreme Court granted the concession of bail to the accused after they had been in custody for 04 years.

Similarly, in the case of *'Mahmood Kurdeya versus Narcotics Control Bureau (Crl. Appeal No.1570-2021 decided on 07.12.2021)'*, the accused, who was a Syrian national, was granted the concession of bail after he had undergone 03 years and 03 months of incarceration.

This Court in the case of *'Ghanso @ Kalo versus State of Punjab (CRM-M-20629-2022 decided on 31.05.2022)'*, granted the

concession of bail to the petitioner after the petitioner had undergone a total custody period of almost 03 years.

7. A perusal of the aforementioned orders would establish that the Hon'ble Supreme Court and this Court have in light of a Right to a Speedy Trial available to an accused under Article 21 of the Constitution of India, granted the concession of bail to the accused despite the rigors of Section 37 of the NDPS Act and on account of the long period of custody.

8. In view of the abovesaid discussion but without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Abraham Lalrmin Gheta, is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

9. The petitioner shall appear on the first Monday of every month before the local police station till the conclusion of the Trial and furnish an affidavit each time that he is not involved in any crime other than the present one.

10. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.2,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from Trial without sufficient cause.

(JASJIT SINGH BEDI)
JUDGE

October 11, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No