

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**CRM-M-35443-2021
Date of decision: 06.01.2022**

Ballu**...Petitioner**

Versus

State of Haryana**...Respondent****CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present:- Mr. Amit Choudhary, Advocate
for the petitioner.

Mr. Chetan Sharma, AAG, Haryana.

(Through video conferencing)

ARVIND SINGH SANGWAN, J. (Oral)

This petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 229 dated 26.05.2020, registered under Sections 18, 27(a) of the NDPS Act, 1985; Section 51(d) of the Disaster Management Act, 2005 and Section 188 of the IPC at Police Station City Tohana, District Fatehabad.

Learned counsel for the petitioner, at the very outset, relies upon orders dated 21.05.2021, 23.04.2021, 16.03.2021, 01.07.2021 and 23.04.2021 passed in CRM-M Nos. 18409, 16712, 1453, 23577 & 16429 of 2021, respectively, vide which co-accused Manoj @ Jhabbal, Sanjeev Kumar @ Raju, Baljeet, Shyam Singh and Kaku @ Binder have already been granted the concession of regular bail by this Court. While granting concession of regular bail to co-accused Baljeet, this Court has passed the following order:

“Learned counsel for the petitioner submits that as

per allegations in the FIR, the police party received a secret information that a truck loaded with raw bananas is coming from Madhya Pradesh towards Tohana, in which 03 persons are there and in that truck, one person namely Balu Singh is having 03 kgs. of opium, which will be supplied to Manoj @ Jhabal and Baljeet. On receiving the aforesaid information, the police stopped the truck bearing No. PB10FB-9806 TATA (12 tyres) and found that 05 persons are sitting in the cabin of the truck. On asking, the driver of the truck disclosed his name as Sanjeev Kumar @ Raju and the other occupants were Balu Singh, who is resident of Rajasthan and was carrying a shoulder bag in his hand, Manoj @ Jhabal, Baljeet and Kaku @ Binder and, thereafter, a notice under Section 50 of the NDPS Act was given separately to all the accused and a Gazetted Officer was called at the spot. On search, 03 kgs. and 20 grams of opium were recovered from the bag which was carried by Balu Singh S/o Kalu Singh, whereas, no recovery was effected from other accused who were present in the truck.

Learned counsel for the petitioner further submits that the petitioner is in judicial custody for the last about 09 months; *challan* stands presented and till date, no prosecution witness has been examined.

Learned counsel for the petitioner further submits that no recovery was effected from the petitioner and this will be a debatable issue during trial, whether compliance of Section 42 of the NDPS Act was properly made or not, as no information was sent to the higher police officials.

Learned State counsel has filed the custody certificate in Court and as per the same, petitioner is in judicial custody for the last about 09 months and 20 days and is involved in 02 more cases under IPC, in which he

is on bail, however, he is not involved in any other case under the NDPS Act.

Learned State counsel has not disputed the fact that till date no prosecution witness has been examined.

I have heard learned counsel for the parties.

Without commenting on the merits of the case and considering the aforesaid submissions made by learned counsel for the parties and also in view of the fact that the petitioner is in judicial custody for the last about 09 months and 20 days, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaq Magistrate, concerned.”

Learned counsel for the petitioner further submits that though as per allegations, recovery of 3 Kgs. of opium was effected from the petitioner and it has come during investigation that the same was supplied by co-accused Shyam Singh, however, co-accused Shyam Singh has already been granted the concession of regular bail by this Court as noticed above.

Reply, by way of the affidavit of the DSP, Tohana, is on record and as per reply, it is stated that the petitioner was in touch with co-accused Shyam Singh, who has supplied 3.20 Kgs. of opium to petitioner for supplying the same to other co-accused Manoj @ Jhabbal and Baljeet with his truck driver Sanjeev Kumar and cleaner Kaku @ Binder.

Learned State counsel, on the basis of the custody certificate, has not disputed the fact that the petitioner is not involved in any other case and he is in judicial custody for the last about 01 year and 07 months.

In reply, learned counsel for the petitioner submits that the trial has substantially been delayed due to COVID-19 situation and again due to

restricted mode of working in the trial Court, there is no likelihood of resumption of trial for recording the evidence by virtual mode, therefore, the conclusion of trial may take a long time.

After hearing learned counsel for the parties, considering the facts that co-accused of the petitioner have already been granted the concession of regular bail by this Court as noticed above and challan qua petitioner stands presented and a supplementary challan qua co-accused Shyam Singh has been submitted and the case is now fixed for framing of charge, which may take some time, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaq Magistrate, concerned.

06.01.2022*Waseem Ansari***(ARVIND SINGH SANGWAN)
JUDGE***Whether speaking/reasoned**Yes/No**Whether reportable**Yes/No*