

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

CRM-M-33723-2022 (O&M)

Date of decision: 27.10.2022

Amritpal Singh @ Amba

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Gurpal Singh Sandhu, Advocate for the petitioner.

Mr. Subhash Godara, Addl. A.G. Punjab.

HARNARESH SINGH GILL, J. (ORAL)

CRM-27278-2022

Application is allowed as prayed for.

Main case:

The petitioner has filed this third petition under Section 439 of Cr.P.C. for grant of regular bail in case FIR No. 138 dated 30.08.2019, registered under Section 15 of the NDPS Act, 1985 and Sections 420, 465, 468, 471 IPC added later on, at Police Station Nihal Singh Wala, District Moga.

Learned counsel for the petitioner submits that in the earlier bail petition filed by the petitioner, a Coordinate Bench of this Court directed the Director General of Police, Punjab, to constitute a Special Team of Senior Police Officers headed by a Police Officer of repute not less than the rank of Inspector General to reinvestigate the case from all the angles and after the investigation conducted by the SIT, three more persons were nominated as

accused including the owner of the truck and thereafter, the *de novo* trial commenced.

Learned counsel for the petitioner further submits that the petitioner has falsely been implicated in the present case; that the petitioner has been in custody since 30.08.2019; that the challan has been presented but the prosecution witnesses are yet to be examined; that the petitioner has nothing to do with the occurrence; that he has been involved by the co-accused to save themselves; that the alleged recovery of 440 kg. of *poppy husk* was effected from the truck, which was being driven by the petitioner; that even as per the story of the police, no recovery has been effected from the conscious possession of the petitioner and that the petitioner is not involved in any other case.

In support of his case, learned counsel for the petitioner relies upon the order dated 27.09.2022 passed by a Coordinate Bench in CRM-M-22722-2022 titled as 'Narinder Pal Vs. State of Punjab', and judgment rendered by the Hon'ble Supreme Court of India in 'Union of India Vs. K.A. Najeer' 2021(2) RCR (Criminal) 145, and order dated 05.08.2022 passed by the Hon'ble Supreme Court of India in Criminal Appeal No. 1169 of 2022, titled as 'Gopal Krishna Patra @ Gopalrusma Vs. Union of India'.

Learned State counsel, while vehemently opposing the prayer for bail, submits that the recovered contraband falls under the commercial quantity and therefore, in view of the bar contained in Section 37 of the NDPS Act, the petitioner is not entitled to the concession of bail. However, he does not dispute the custody period of the petitioner and that there is no other case against the petitioner. He submits that out of 18 prosecution witnesses,

none has been examined as yet.

I have heard the learned counsel for the parties.

The petitioner has been in custody since 30.08.2019. Though the recovery was effected from the truck, being driven by the petitioner, yet the fact remains that the petitioner has been in custody for the last more than 03 years and he is not involved in any other case. The prosecution witnesses are yet to be examined. Therefore, the conclusion of the trial would take time. Hence, no useful purpose would be served by keeping the petitioner behind the bars.

In view of the above, without commenting anything on the merits, lest it should prejudice the case of either side, the petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the learned trial Court/Duty Magistrate.

It is also clearly stipulated that the petitioner would be required to remain present on all dates fixed by the trial Court and his counsel will not seek unnecessary adjournments and that if the petitioner tries to delay the trial or involves him into another case of a similar nature, the trial Court would put back him into incarceration.

27.10.2022

Mangal Singh

(HARNARESH SINGH GILL)

JUDGE

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No