

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

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(I) CRM-M-32497-2019 (O&M)
Date of Decision:- 28.03.2022

Ashok Kumar ... Petitioner

Versus

State of Punjab ... Respondent

(II) CRM-M-6906-2020 (O&M)

Kulvir Singh ... Petitioner

Versus

State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Jashandeep Singh Sandhu, Advocate,
for the petitioner in CRM-M-32497-2019.

Mr. P.K.S. Phoolka, Advocate,
for the petitioner in CRM-M-6906-2020.

Mr. Rehatbir Singh Mann, DAG, Punjab
with ASI Rajiv Kumar.

GURVINDER SINGH GILL, J. (Oral)

1. This order shall dispose of the above mentioned two petitions filed by Ashok Kumar and Kulvir Singh, seeking grant of regular bail in respct of a case registered against them vide FIR No.54 dated 20.04.2019, Police Station Kotwali, District Bathinda, under Section 22 of NDPS Act.

2. The allegations, in nutshell, are that on 20.04.2019, the petitioners, who were present near Bus Stand, Bathinda, upon noticing the Police party threw the bags which they were carrying and tried to run away, but were apprehended by the Police. Upon search of both the bags, each of the bag was found to contain 30 vials of ONEREX-100 ML each i.e. total of 3,000 ML apart from 30 strips of Carisoprodol, were recovered.
3. Learned counsel for the petitioners has submitted that they have falsely been implicated in the present case and that they cannot be attributed conscious possession of the alleged contraband. It has been submitted that, in any case, the petitioners have been behind bars for a substantial period of about 3 years and since the trial is not even commenced till date, they are entitled to grant of bail.
4. On the other hand, learned State counsel while opposing the petitions has submitted that both the petitioners were caught red-handed at the spot while in possession of 'commercial' quantity of contraband and, as such, they do not deserve to be released on bail. It has further been submitted that while petitioner Ashok Kumar as on date is not involved in any other case, the petitioner Kulvir Singh happens to be involved in one more case registered under Sections 379/379-B IPC. Learned State counsel has further informed that the petitioners as on date have been behind bars since the last about 2 years 11 months and 5 days and that although charges have been framed but none of the cited 13 PWs has been examined till date.
5. I have considered rival submissions addressed before this Court.
6. Hon'ble the Supreme Court vide order dated 7.2.2020 passed in

Criminal Appeal No.245 of 2020 titled 'Chitta Biswas Alias Subhas Vs. The State of West Bengal' while dealing with a matter regarding grant of bail to an accused charged with allegations of being in possession of 'commercial' quantity of contraband, granted bail mainly on the ground that the petitioner has been in custody since 21.7.2018 and only 4 out of the cited 10 PWs had been examined.

7. In another case i.e. Criminal Appeal No.1570 of 2021 titled 'Mahmood Kurdeya Vs. Narcotics Control Bureau' pertaining to a case of recovery of 'commercial' quantity of 'Tramadol', where the accused had been in custody for about 3 years and 3 months, Hon'ble the Supreme Court vide its order dated 7.12.2021 was pleased to grant bail while making the following observations:

“.....What persuades us to pass an order in favour of the appellant is the fact that despite the rigors of Section 37 of the said Act, in the present case though charge sheet was filed on 23.09.2018 even the charges have not been framed nor trial has commenced. The manufacturer who sold the drugs to the appellant during the sunset clause himself has been granted bail.”

8. In yet another case i.e. Criminal Appeal No.668 of 2020 titled 'Amit Singh Moni Vs. State of Himachal Pradesh', Hon'ble the Supreme Court vide its order dated 12.10.2020 was pleased to grant regular bail pertaining to a case of recovery of 'commercial' quantity of contraband on account of custody of 2 years and 7 months.
9. Without commenting anything as regards the merits of the case but while noticing the long custody period of the petitioners i.e. more than 2 years & 11 months and the fact that the trial is not

even commenced till date inasmuch as not even a single PW out of cited 13 PWs has been examined so far, further detention of the petitioners will not serve any useful purpose, the petition is accepted and the petitioners are ordered to be released on regular bail on their furnishing bail bonds/surety bonds to the satisfaction of learned Trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

10. A photocopy of this order be placed on the connected case.

28.03.2022
VY

(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No