

(224) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-42356-2022
Date of Decision: 20.09.2022

Bachittar Singh

... Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

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

Mr. Jaiteshwara Singh, Asst. A.G., Punjab.

JASJIT SINGH BEDI, J.

The prayer in the present petition is for the grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.126 dated 01.08.2019 registered under Sections 21, 25, 29 of NDPS Act, 1985 with the Police Station Sadar, Kapurthala, District Kapurthala.

2. The brief facts of the case are that while the police officials were on patrolling duty then at about 08.30 AM one clean shaven person with a black coloured bag in his right hand was seen getting down from an auto rickshaw and walking towards an I-20 car standing nearby. There were five persons in the car, who were identified as Rajbir Singh, Sukhjiwan Singh sons of Balwant Singh, Lovepreet Singh @ Lovely son of Gurcharan Singh, Hans Raj son of Dara Singh and Dilbag Singh son of Balwinder Singh. The person who had got down from the auto rickshaw upon seeing the police party got nervous and tried to turn back and the I-20 car being driven by Rajbir Singh also fled away from the spot. The person who got down from

the auto rickshaw was apprehended by the police officials and on inquiry disclosed his name as Kapil Arora son of Manohar Lal Arora.

3. On search, 05 kg heroin/Diacetylmorphine was recovered from him. During the course of investigation the name of the petitioner surfaced and he was arrested on 26.12.2019 in the present case while he was in custody in some other case. He is in custody ever since.

4. The learned counsel for the petitioner contends that the petitioner is not named in the FIR. He has been named during the course of investigation and no recovery has been effected from him. The main accused Kapil Arora has been granted the concession of regular bail by this Court vide order dated 24.03.2022 passed in CRM-M-24306-2021 (Annexure P-2). Two co-accused namely, Hans Raj Singh @ Hans Raj and Deepak Kumar have been granted the concession of anticipatory bail by this Court vide order dated 16.11.2019 passed in CRM-M-47765-2019 and CRM-M-46971-2019 (Annexure P-3), whereas Rajanbir Singh @ Rajbir Singh and Sukhjeevan Singh have been granted the concession of regular bail by this Court vide order dated 05.04.2022 passed in CRM-M-43459-2021 and CRM-M-43827-2021 (Annexure P-4). He contends that none of the 20 prosecution witnesses have been examined so far and since the petitioner has been in custody since the last more than 02 years and 08 months. Therefore, he deserves the concession of regular bail.

5. On the other hand, the learned State counsel while not disputing the fact that the co-accused of the petitioner have been granted the concession of either regular bail or anticipatory bail as also the period of custody undergone by the petitioner contends that the petitioner does not

deserve the concession of bail as he is involved in two other cases under the NDPS Act and thus is a habitual offender. Further, the I-20 car belonged to the petitioner. He has also placed on record the custody certificate as per which the petitioner has undergone 02 years, 08 months and 28 days.

6. I have heard the learned counsel for both the parties at length.

7. Admittedly, the co-accused of the petitioner including the main accused Kapil Arora have been granted the concession of bail. There are two other FIRs against the petitioner bearing No.193 dated 22.11.2019 registered under Sections 15/21/25/29/61/85 of NDPS Act at Police Station Kartarpur, Jalandhar in which he has been granted the concession of regular bail (100 gm heroin recovered) and FIR No.127 dated 30.11.2019 registered under Sections 21/29/61/85 NDPS Act at Police Station Sadar Phagwara, District Kapurthala (nominated on the basis of a disclosure statement) in which he is on bail. The copies of the orders are marked as 'X' and 'Y'. This Court in the case of **Ghanso @ Kalo Versus State of Punjab passed in CRM-M-20629-2022 decided on 31.05.2022**, granted bail to the accused where she had been in custody for 02 years and 09 months. In the present case also the petitioner is in custody since the last 02 years, 08 months and 28 days and therefore, his case is similar to that of **Ghanso @ Kalo** (supra).

8. Since the petitioner is in custody since long and no recovery of any kind has been effected from him, the rigors of Section 37 NDPS Act can be relaxed to an extent and his prayer for bail can be considered in the context of the right to speedy trial as envisaged under Article 21 Constitution of India.

9. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Bachittar Singh son of Kulwant Singh is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

10. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other crime other than the cases mentioned in this order.

11. In addition, the petitioner shall prepare an FDR in the sum of Rs.1,00,000/- 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.

12. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

20.09.2022

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No