

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-46341 of 2022

Date of Decision:30.11.2022

Jaipal Singh @ Jaypal Singh Devsing Nakyada

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Raj Karan Singh Verka, Advocate, for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.57 dated 07.04.2019, under Section 20 of the NDPS Act, registered at Police Station Bhogpur, District Jalandhar.

It has been submitted by the learned counsel for the petitioner that in the present case, the petitioner is in custody from 07.04.2019, which is more than 3 years and 7 months and till date even charges have not been framed. He further submitted that the petitioner is not a habitual offender and is not involved in any other case. As per the allegations, the petitioner and the co-accused were found with 4Kg each of charas and it is a case where the petitioner has been falsely implicated by the Police. He has further submitted that be that as it may, the petitioner has faced incarceration for more than 3 years and 7 months and till date

charges have not been framed and, therefore, his rights have been prejudicially affected and he may be considered for grant of bail.

On the other hand, Mr. Kunal Vinayak, learned AAG, Punjab has stated that the petitioner has faced incarceration for more than 3 years and 7 months and till date charges have not been framed and now the case is fixed for framing of charge on 12.12.2022. He has filed custody certificate according to which the petitioner is in custody for more than 3 years and 7 months. As per custody certificate, the petitioner is not involved in any other case. He has further submitted that the confiscated quantity falls under the category of commercial quantity and therefore the petitioner is not entitled for grant of bail.

I have heard learned counsel for the parties.

On 15.11.2022, this Court had directed the concerned Special Judge to file a report with regard to the status of the present case. A report has been received from the concerned Special Judge wherein it has been stated that the matter has been delayed because on many occasions the other co-accused was not produced by the jail authorities in the present case. As per report, it is stated by the learned Special Judge that the challan in the present case was presented on 31.08.2019 and both the accused were in custody and their production warrants were ordered to be issued. But the accused Jai Pal was produced on some occasions whereas the other co-accused Kailash was not produced in the Court by the jail authorities despite issuance of production warrants on a number of occasions. Thereafter, the matter was adjourned continuously because of Covid-19 Pandemic. Even thereafter, for a number of times the case was adjourned because of the non-production of the accused. The other co-accused, namely, Kailah was

lodged in Sabarmati Jail, Gujarat but despite production warrants, he was not produced by the jail authorities and the case was kept pending.

After hearing, learned counsel for the parties, this Court is of the view that whatever may be the reason for the delay in the trial but the fact remains that the petitioner is in custody from 3 years and 7 months and 22 days and even till date charges have not been framed in the present case. Therefore, this Court is of the considered view that since the delay has not been caused at the hands of the petitioner and his rights under Article 21 of the Constitution of India have been impaired, therefore he deserves the concession of regular bail and the bar contained under Section 37 of the NDPS Act will not apply in the present case in the light of Article 21 of the Constitution of India.

Therefore, this Court is of the considered view that the petitioner deserves the concession of regular bail. Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

(JASGURPREET SINGH PURI)
JUDGE

November 30, 2022

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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No