

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

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CRM-M-51460-2021 (O&M)
Date of Decision: 17.03.2022

Kapil Dev

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Manuj Nagrath, Advocate, for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab,
assisted by SI Rashpal Singh.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered against him vide FIR No.93 dated 28.05.2018 at Police Station Moti Nagar, District Ludhiana, under Sections 22/27-A/29/61/85 of Narcotic Drugs and Psychotropic Substances Act.
2. The case of the prosecution is that on 28.05.2018, the Police party intercepted one Innova car bearing Registration No.PB-10-DB-1063. Apart from the driver, one more person was sitting on the front passenger seat. Upon being signaled to stop, the driver of the car stopped the car at a short distance from the barricading raised by the Police and tried to turn back the car but was not successful. The said persons were apprehended by the Police. The driver of the vehicle

- disclosed his name as Kapil Dev, whereas the other person disclosed his name as Hardeep Kumar @ Deepak. Upon search of the car, 1 KG of 'heroin' was recovered from a plastic bag lying underneath the front passenger seat. It is further the case of prosecution that during the course of interrogation, both the aforesaid accused suffered disclosure statement to the effect that it is Vikramjeet Singh, who had supplied the contraband to the aforesaid Kapil Dev and Hardeep Kumar.
3. Learned counsel for the petitioner has submitted that he has falsely been implicated in the present case and that there is no evidence worth credence to connect him with the alleged recovery of contraband. Learned counsel has further submitted that he has been behind bars for a substantial period of about 3 years & 9 months and that upon arrest of the 3rd accused, namely Vikramjeet Singh, supplementary challan has been presented by the prosecution on 08.03.2021 and fresh charges have been framed on 07.04.2021 and therefore de novo trial has commenced.
4. Opposing the petition, learned State counsel has submitted that since it is a case of recovery of 'commercial' quantity of contraband, the petitioner is dis-entitled to grant of bail. It has been pointed out that although the prosecution had examined 4 witnesses, but on account of arrest of the co-accused Vikramjeet Singh, all the witnesses have to be examined afresh. Learned State counsel has not disputed that the petitioner has been behind bars since the last about 3 years, 9 months & 19 days. It has also been informed that the petitioner stands involved in one more case under the NDPS Act i.e. FIR No.72 dated 25.05.2019 under Sections 22/27/29/61/85 NDPS Act, Police Station

Division No.2, Ludhiana, as has been mentioned in the custody certificate. Learned State counsel has also informed that as many as 17 PWs have been cited.

5. I have considered rival submissions addressed before this Court.
6. It is not in dispute that there is a specific allegation to the effect that the petitioner was caught red-handed at the spot alongwith co-accused Hardeep Kumar @ Deepak while in possession of 1 Kg. of 'heroin', which was kept concealed underneath front passenger seat of Innova vehicle driven by the petitioner. The said vehicle is stated to be owned by the petitioner himself. At the same time, this Court also notices that though 4 PWs are stated to have been examined out of cited 17 PWs, but de novo trial has commenced w.e.f. 07.04.2021 after co-accused Vikramjeet Singh was arrested and a supplementary challan was filed against him.
7. Though the petitioner is stated to be involved in one more case registered under the NDPS Act, but this court finds that while the present FIR was registered in the year 2018, the other case is stated to have been registered on 22.05.2019, when the petitioner was already in custody in the present case, which would at least indicate that the petitioner was never caught red-handed in the said case.
8. The petitioner has been behind bars for a substantial period of 3 years & 9 months. Conclusion of trial will consume time inasmuch as all the cited 17 PWs have to be examined afresh. In these circumstances, further detention of the petitioner will not serve any useful purpose. The petition, as such, is accepted and the petitioner is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to

the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

17.03.2022

VY

Whether speaking/reasoned:
Whether reportable:

(GURVINDER SINGH GILL)

JUDGE

Yes/No
Yes/No