

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

CRM-M-739-2023

Date of decision: 22.05.2023

Malkeet Singh @ Ajay Kumar

...Petitioner

Versus

State of Punjab

...Respondent3

**CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR**

Present: Mr. Amit Arora, Advocate for the petitioner.

Mr. Jashanpreet Singh, DAG, Punjab.

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**NAMIT KUMAR, J.**

1. Petitioner has filed the instant petition under Section 439 Cr.PC seeking regular bail in case FIR No.87 dated 24.12.2017 under Section 21 of the NDPS Act, 1985 registered at Police Station Sarai Amanat Khan, District Tarn Taran.

2. Learned State counsel has filed the status report dated 22.05.2023 which is taken on record. Copy thereof has been supplied to the counsel for the petitioner.

3. The brief facts of the prosecution case are that police party received the secret information to the effect that Avtar Singh, petitioner-Malkeet Singh @ Ajay Kumar, Ranjodh Singh @ Jodha, Jagdhir Singh @ Seera and Jasreet Singh @ Laddu have formed gang and used to commit thefts, robbery, dacoity after being armed with deadly weapons and also used to indulge in selling the narcotic drugs. On the basis of said secret information police conducted raids and on 24.12.2017 petitioner was apprehended with 265 grams of heroin.

4. Learned counsel for the petitioner submitted that the petitioner is innocent and has been falsely implicated in the present case. He further

submits that there is total non-compliance of provisions of Sections 42 and 50 of the NDPS Act. He further submitted that petitioner is in custody since 24.12.2017. He further submitted that investigation in the present case is complete; *challan* has been presented; charges have been framed and now the case is fixed for prosecution evidence on 01.06.2023. Learned counsel for the petitioner has referred to a judgment of the Hon'ble Supreme Court passed in "***Satender Kumar Antil Vs. Central Bureau of Investigation and another***", 2022(10) SCC 51, to contend that the Hon'ble Supreme Court has discussed the serious issue with regard to repeated adjournments and its effect upon the Right to Life under Article 21 of the Constitution of India. He also referred to a latest judgment of the Hon'ble Supreme Court passed in ***Mohd. Muslim @ Hussain Vs. State (NCT of Delhi, 2023 AIR (Supreme Court) 1648*** to contend that when there is a long delay in the trial and especially when it is not the fault of the accused and in that situation even the effect of Section 37 of the NDPS Act will be diluted in the given facts and circumstances of each and every case. He further submitted that petitioner is not involved in any other case under the NDPS Act. Trial may take a considerable time to conclude. Therefore, no fruitful purpose would be served by detaining the petitioner behind bars.

5. *Per contra*, learned State counsel has opposed the prayer for grant of regular bail to the petitioner by submitting that petitioner was apprehended with 250 grams of heroin which falls under the category of commercial quantity. He further submits that the petitioner is a habitual offender as he is involved in 2 more cases i.e. FIR No.130 dated 05.11.2017 under Sections 379B/34 IPC registered at Sarhali, District Tarn Taran and in FIR No.86 dated 24.12.2017 under Sections 399/402 IPC and Sections

25/27 of the Arms Act, 1959 and Section 21 NDPS Act registered at Police Station Sarai Amanat Khan, District Tarn Taran.

6. Learned counsel for the petitioner submits that in case FIR No.130 dated 05.11.2017 petitioner has been acquitted by the Court of Ld. Ld. Additional Sessions Judge, Tarn Taran vide judgment dated 02.03.2023 and in case FIR No.86 dated 24.12.2017 he is on bail.

7. I have heard learned counsel for the parties and perused the record.

8. In view of the custody period undergone by the petitioner, it is apposite to refer to a few judgments of Hon’ble Supreme Court in this regard wherein Hon’ble Supreme Court has granted the concession of bail solely on ground of long custody:-

| Case Number                                    | Date of Decision | Title of case                                        | Period which the accused had undergone when granted bail by Hon'ble Supreme Court |
|------------------------------------------------|------------------|------------------------------------------------------|-----------------------------------------------------------------------------------|
| Criminal Appeal No.245/2020                    | 07.02.2020       | Chitta Biswas @ Subhas Vs. the State of West Bengal  | 1 year and 7 months                                                               |
| Criminal Appeal No.668/2020                    | 12.10.2020       | Amit Singh Moni Vs. State of Himachal Pradesh        | 2 years and 7 months                                                              |
| Special Leave to Appeal (Crl.) No.5187 of 2021 | 10.11.2021       | Kulwant Singh Vs. The State of Punjab                | More than 2 years                                                                 |
| Special Leave to Appeal (Crl.) No.5769/2022    | 01.08.2022       | Nitish Adhikary @ Bapan Vs. the State of West Bengal | 1 year and 7 months                                                               |
| Special Leave to Appeal (Crl.) No.4173 of 2022 | 04.08.2022       | Shariful Islam @ Sarif Vs. the State of West Bengal  | 1 year and 6 months                                                               |

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|------------------------------------------------------|------------|-----------------------------------------------------------------|--------------------------------|
| Criminal Appeal<br>No.1169 of 2022                   | 05.08.2022 | Gopal Krishna<br>Patra @<br>Gopalrusma Vs.<br>Union of India    | 2 years 1 month<br>and 17 days |
| Special Leave to<br>Appeal (Crl.)<br>No.5530-2022    | 22.08.2022 | Mohammad<br>Salman Hanif<br>Shaikh Vs. the<br>State of Gurjarat | About 2 years                  |
| Special Leave to<br>Appeal (Crl.)<br>No.7840 of 2022 | 31.10.2022 | Shahjad Vs. The<br>State of Uttar<br>Pradesh                    | About 2 years                  |

9. Keeping in view the custody of the petitioner, which is 05 years; 04 months and 24 days; investigation is complete; *challan* has been presented; charges have been framed; case is fixed for prosecution evidence and trial is likely to take a considerable time, however, without commenting upon the merits of the case, the petitioner is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court. However, in addition to conditions that may be imposed by the trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions: -

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence similar to the one alleged in the present case.
- (v) The petitioner shall deposit his passport, if any with the trial Court.
- (vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.
- (vii) The petitioner shall not in any manner try to delay the trial.

10. In case of breach of any of the aforesaid conditions and those which may be imposed by the trial Court, the prosecution shall be at liberty to move an application for cancellation of bail of the petitioner.
11. The petition stands disposed of accordingly.

22.05.2023  
Parveen Kumar

(NAMIT KUMAR)  
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No