

CRM-M-3358 of 2022

2023:PHHC:073261

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

CRM-M-3358 of 2022
Date of decision: 19.05.2023

Raj Kumar @ Raja

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Jashandeep Singh Sandhu, Advocate,
for the petitioner.

Mr. Adhiraj Singh, AAG, Punjab.

NAMIT KUMAR, J.

1. This petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case FIR No.46 dated 19.04.2021 under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Sadar Ferozepur, District Ferozepur, Punjab.

2. Present FIR has been registered against the present petitioner on the basis of secret information received by the Investigating Officer to the effect that petitioner-Raj Kumar is indulged in the illegal business of sale and purchase of heroin and has links with the cross-border smugglers and used to bring the heroin through border fence. When raid was conducted petitioner was found in conscious possession of 270 grams of heroin and thereafter, disclosure statement under Section 27 of the Indian

Evidence Act has been recorded on 19.04.2021 and on the basis of the said

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disclosure statement, petitioner got recovered 06 Kilograms heroin from the border fencing in the presence of BSF officials.

3. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the present case as he has not committed the alleged offence . Petitioner is in custody since 19.04.2021. Learned counsel further submits that investigation in the present case is complete; *challan* has been presented; charges have been framed and out of total 16 prosecution witnesses only one witness has been examined. 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 ***Criminal Appeal No.943 of 2023 titled as “Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)”*** decided on 28.03.2023 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 submits 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.

4. *Per contra*, learned State counsel, while placing on record the custody certificate, has opposed the prayer for grant of regular bail to the petitioner on the ground that heavy recovery of heroin, which falls under

commercial quantity, has been effected from him. However, he could not refute that out of total 16 prosecution witnesses only one witness has been examined till date; petitioner is in custody for the last 02 years and 24 days: he is not involved in any other case and the trial may take a considerable time to conclude.

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

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

7. Keeping in view the custody of the petitioner, which is 02 years and 24 days; investigation is complete; challan has been presented; charges have been framed and out of 16 prosecution witnesses, only one prosecution witnesses has been examined; petitioner is not involved in any other case under the NDPS Act 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

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number without permission of the trial Court.

(vii) The petitioner shall not in any manner try to delay the trial.

8. 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.

9. The petition stands disposed of accordingly.

19.05.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No