

219(1) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8819-2021

Date of decision: 09.11.2023

LAKHBIR SINGH

...PETITIONER

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: Mr. Navraj Singh, Advocate for the petitioner.

Mr. Parneet Singh Pandher, AAG, Punjab.

DEEPAK GUPTA J. (ORAL)

Custody certificate has been filed by the respondent-State and the same is taken on record.

2. On 05.05.2022, the following order was passed by this Court:-

"By this petition, the petitioner seeks the concession of 'regular bail' under the provisions of Section 439 Cr.P.C., upon FIR No.03, dated 11.06.2019, having been registered at Police Station State Special Operations Cell, District Fazilka, alleging therein the commission of offences punishable under the provisions of Sections 307/353/332/333/186 of the IPC and Sections 21 and 23 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

Learned counsel for the petitioner relies upon an order passed by this court (this Bench) on April 21, 2022, in the case of yet another co-accused of the petitioner, Harjinder Singh alias Kalakar son of Gajjan Singh, that person having filed CRM-M-26905-2021, seeking the same relief.

The said order reads as follows:-

"Learned State counsel submits that the reply filed by the State to CRM-M-8819 of 2021 (listed at sr. no.201 today), be also accepted to be the reply in this case, as both the bail petitions arise out of the same FIR and with the petitioners having been arrested together

Learned counsel for the petitioner submits that the petitioner has been in custody for more than 2 years and 10 months even as per the custody certificate filed in court

today by learned State counsel, with no other criminal case shown to be registered against him and that ten prosecution witnesses still remaining to be examined, with only four having been examined so far.

He therefore relies upon an order passed by the Supreme Court in Criminal Appeal no.668 of 2020 (Amit Singh Moni v. State of Himachal Pradesh) on 12.10.2020, admitting the appellant before the Apex Court to bail, who had also been arraigned as an accused on charges of having committed offences punishable under Sections 20 and 29 of the NDPS Act, 1985.

A perusal of that order shows that charas weighing 3285 grams was found concealed (as per the case of the prosecution), in the vehicle in which the accused was travelling, but with the Supreme Court having directed that he be admitted to bail by the trial court to its complete satisfaction, he having been in custody at that stage for 2 years and 7 months, with the trial not progressing due to the Covid-19 pandemic.

It is to be observed that obviously that order would have been passed by the Supreme Court exercising jurisdiction under Article 142 of the Constitution of India, which jurisdiction is obviously not conferred on this court: and therefore unless a case is made out by the petitioner in terms of Section 37(1)(b)(ii) of the NDPS Act, 1985, I would find no reason to actually admit the petitioner to bail absolutely.

Though learned counsel for the petitioner has also submitted that a joint offer was given to both the petitioners as regards their personal search, learned counsel for the State submits that even as per the reply filed, actually separate offers were given.

Be that as it may, the period of custody having been 2 years and 10 months and the trial obviously not anywhere near conclusion as yet, at this stage it is considered appropriate to admit the petitioner to interim bail, especially as he has no other criminal antecedents shown in the custody certificate filed in court today, till the next date of hearing before this court, upon him furnishing adequate bail and

surety bonds to the complete satisfaction of the trial court, which would obviously be at liberty to impose whatever condition as it considers necessary to be imposed upon him, at the time of his admission to bail.

That court would also send a report to this court one week before the next date of hearing, as to the exact stage of the trial and the time frame likely for its conclusion, subject to of course prosecution witnesses (normally all police officials), appearing before it as and when summoned.

Adjourned to 05.07.2022."

Learned counsel for the petitioner submits that the petitioner is no differently placed to the aforesaid person, with him now having been in custody for almost 2 years and 11 months and the only reason why he was not granted the same concession on April 21, 2022, when this petition had come up for hearing alongwith that one, is that learned counsel himself could not be present on that date as is obvious from the order passed in this petition on that date.

Though learned State counsel otherwise vehemently opposes the petitioner being admitted to bail on account of the allegations against him as per the FIR, as regards the parity of the situation between the petitioner and the aforementioned Harjinder Singh alias Kalakar, he could not deny that.

Upon query to him he submits that out of 15 prosecution witnesses 5 have been examined so far, with the next date of hearing before the trial court being 02.06.2022.

That being so, on the same ground that the co-accused of the petitioner, i.e. Harjinder Singh alias Kalakar, has been admitted to interim bail by this court on 21.04.2022, the petitioner is also ordered to be admitted to interim bail, upon him furnishing adequate bail and surety bonds to the complete satisfaction of the trial court, till the next date of hearing before this court, i.e. 05.07.2022."

3. Today, it is informed by learned State counsel that trial is now at fag end as much as even the arguments have been heard and case is fixed for pronouncement of orders.

4. In view of the aforesaid, the order dated 05.05.2022, whereby the petitioner was granted interim bail, is hereby made absolute.

Disposed of.

November 09, 2023
manisha

(DEEPAK GUPTA)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No