

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRM-M No.8409 of 2022 (O&M)
Date of Decision.24.01.2023

Jagseer Singh and another

...Petitioners

Vs

State of Punjab

...Respondent

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Jasvir Singh Dhaliwal, Advocate
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

-. -

JAISHREE THAKUR J. (ORAL)

This is second petition that has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioners in FIR No.216 dated 27.07.2021 registered under Sections 22 of the NDPS Act, 1985 at Police Station Sadar Mansa, District Mansa, Punjab.

Learned counsel appearing for the petitioners would contend that the petitioners are in custody since 27.07.2021, as on the said date they were allegedly apprehended with 3000 tablets of Clovidol-100 SR and 2000 tablets of Tramwel-SR. It is contended that in fact, the plastic bag from which alleged recovery was effected, was not in their possession but was lying on the ground between them. It is further contended that the petitioners are in custody for over a period of 1 ½ years, however, the trial has not commenced till date. It is argued that the petitioners are first time offenders and since debatable issue is involved regarding conscious possession of the contraband recovered, the petitioners herein are entitled to bail during the pendency of trial. He relies upon the order dated 16.01.2023 passed by a Coordinate Bench in CRM-M No.53024 of 2021 titled as *Happy Singh Vs. State of Punjab* and order dated

01.12.2022 passed in CRM-M No.43867 of 2022 titled as *Sumit Khatri Vs. State of Punjab* wherein bail was granted on the ground of delay in commencement of trial.

Learned counsel appearing on behalf of the respondent-State opposes grant of bail to the petitioners on the ground that recovery effected from the petitioners is of commercial quantity.

I have heard learned counsel for the parties and have perused the paper book. The petitioners herein are in custody for over a period of 1 ½ years, however, the trial has not commenced yet. The Hon'ble Supreme Court in the judgment rendered in *M.D. Raja and another Vs. State of West Bengal* passed in Criminal Appeal No.1293 of 2022 decided on 22.08.2022 granted bail to the accused who was found in possession of 414 kg. ganja on the ground of incarceration of the accused for a period of 4 years and the trial had not proceeded an inch for two years. While granting bail, Hon'ble Supreme Court observed that *we cannot permit the situation to prevail where the person is kept in incarceration for a long period of time with the trial hardly to commence*. The Hon'ble Supreme Court in *Union of India v. K.A. Najeed, (2021) 3 SCC 713* has held as under:

“15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India [Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39], it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless

the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.”

Trial in the instant case is yet to commence and the petitioners are in custody since 27.07.2021 and therefore, since trial is likely to take time to conclude, no useful purpose would be served in keeping the petitioners behind bars. The instant petition is allowed and the petitioners are directed to be released on regular bail on their execution of adequate personal/surety bonds to the satisfaction of concerned trial court/Duty Magistrate. However, any observation made herein shall not be construed to be an expression on merits of the case.

(JAISHREE THAKUR)
JUDGE

January 24, 2023
Pankaj*

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No