

MUSTAKEEM @ MUSTAKEEN

VERSUS

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. C.S.Rana, Advocate for the petitioner.

Ms. Puneeta Sethi, Sr. Panel Counsel for Union of India.

Mr. Hittan Nehra, Addl. AG, Punjab.

VIVEK PURI,J. (ORAL)

1. Custody certificate of the petitioner has been circulated today and the same is taken on record.
2. Mustakeem @ Mustakeen-petitioner is seeking regular bail in the case bearing FIR No.06 dated 16.01.2020, under Sections 8/20/25/29 & 60 of the NDPS Act, registered at Police Station NCB, Chandigarh.
3. Precisely, the allegations against the petitioner are to the effect that on 15.01.2022, in pursuance of the secret information, Gurinder Pal Singh and Altaf were apprehended while travelling in a vehicle and 9.970 kg of charas were recovered from the petitioner and the co-accused.
4. Learned counsel for the petitioner contends that the petitioner is in custody for a period of 03 years, 03 months and 07 days and not involved in any other case. So far, only 04 out of 15 witnesses have been examined. Moreover, Gurinder Pal Singh and Altaf who were travelling in a car have been granted

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21698-2020 and CRM-M-29342-2020 respectively.

5. Learned counsel for the petitioner has sought to rely upon the decision of Supreme Court rendered in ***Criminal Appeal No. 668 of 2020*** titled as ***Amit Singh Moni Vs. State of Himachal Pradesh***, wherein bail has been granted to the accused in a case pertaining to the recovery of commercial quantity, after he had completed more than 02 years and 07 months of actual custody. Furthermore, it has been argued that in SLP Crl. No. 5769 of 2022 titled as ***Nitish Adhikary @ Bapan Versus The State of West Bengal***, decided on 01.08.2022 by the Hon'ble Supreme Court of India, the accused was granted bail in a case pertaining to recovery of commercial quantity after he had undergone custody for 01 year and 07 months and trial was at a preliminary stage, as only 1 witness has been examined and the accused was not having criminal antecedents. Besides, the decision rendered in SLP Crl. No. 4173 of 2022 decide on 04.08.2022 titled as ***Shareef Shariful Islam @ Sarif Versus The State of West Bengal***, the accused was granted bail after he had suffered incarceration for a period of 01 year and 06 months and there being no likelihood of completion of trial in future. Furthermore, the decision in SLP Criminal No.6690-2022, it has been held that in the absence of criminal antecedents and long incarceration, the condition under Section 37 of NDPS Act can be dispensed with and moreso, when the trial is not progressing.

6. Learned counsel for the respondent-UOI has opposed the bail application on the score that the quantity of contraband recovered in the instant case falls in the category of commercial quantity. Moreover, case of the petitioner cannot be termed to be at parity with the co-accused as he was the driver of the car and the contraband has been recovered from the cavity made in

the fact that the charge was framed as back as on 05.03.2021.

7. Be that as it may, in the instant case, so far, only 04 out of 15 witnesses have been examined. The petitioner is in custody for a period of 03 years, 03 months and 07 days and is not involved in any other case. The petitioner cannot be kept in incarceration for a long period of time during the course of trial, particularly, because the trial is not progressing. The speedy trial is a constitutional right provided to an accused under Article 21 of the Constitution of India. Moreover, the co-accused, namely, Gurinder Pal Singh and Altaf who are alleged to be in joint conscious possession of the contraband along with the petitioner have been granted bail.

8. In such circumstances, the ends of justice will meet if the concession of bail is extended to the petitioner. Accordingly, without expressing any opinion on the merits of the case, the instant petition is allowed. The petitioner is ordered to be released on bail on his furnishing requisite bail bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

9. The petition is allowed accordingly.

26.04.2023

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(VIVEK PURI)
JUDGE

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