

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-12291-2022 (O&M)
Date of decision: 13.04.2023

Dilbaag Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ruhani Chadha, Advocate
for the petitioner.

Mr. Teevar Sharma, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this 2nd petition is for grant of regular bail in FIR No.126 dated 01.08.2019 under Section 21 of NDPS Act (Section 29 of NDPS Act was added later on), registered at Police Station Sadar Kapurthala, District Kapurthala; earlier one was dismissed as withdrawn on 26.10.2021.

Learned counsel for the petitioner submits that new ground for filing this second petition is that the petitioner is in custody for the last more than 02 years and till date, out of total 32 prosecution witnesses, only 01 PW has been examined and two of his co-accused have already been released on bail and his case is at par with them.

Learned counsel has relied upon the order dated 24.03.2022 passed in CRM-M-24306-2021, vide which co-accused Kapil Arora was granted the concession of regular bail. It is further submitted that recovery of 05 kg of heroin was effected from co-accused Kapil Arora, who has already been granted the concession of regular bail. It is also submitted that even two more co-accused namely Rajanbir Singh @ Rajbir Singh and Sukhjeevan Singh were granted the concession of regular bail vide order dated 05.04.2022 passed in CRM-M-43459-2021 and CRM-M-43827-2021. The operative part of the order reads as under: -

“Counsel for the petitioners has relied upon the order dated 24.03.2022 passed in CRM-M No.24306 of 2021, vide which the co-accused of the petitioners namely Kapil Arora, has been granted the concession of regular bail. The operative part of the said order, reads as under:-

“Learned counsel further submits that as per allegations in the FIR, registered at the instance of SI Jatinder Singh, it is stated that while on patrol duty, they were checking the vehicles and a person was seen coming, who was carrying a black color bag and had gone to an i20 car, which was standing nearby. In the said car, there were already five persons, namely Rajbir, Sukhjeevan Singh, Lavpreet Singh @ Lovely, Hansraj and Dilbagh Singh. On seeing the police party, the person, who was carrying the bag, became nervous and tried to run away. The other persons, sitting in aforesaid i20 car also fled away. Thereafter, the said person was apprehended, who on inquiry disclosed his name as

Kapil Arora i.e. the present petitioner. On suspicion, a notice was given and DSP was called at the spot and in his presence, 05 kgs. of heroin was recovered.

Learned counsel further submits that challan was presented on 16.12.2019 and the trial was delayed due to COVID-19 situation and thereafter, the charges were framed on 31.01.2022; out of total 20 prosecution witnesses none has been examined so far and the petitioner is in judicial custody for the last 02 years, 07 months and 20 days and he is not involved in any other case.

Learned counsel further submits that it will be a matter of trial whether proper procedure under Sections 42 and 50 of the NDPS Act was followed or not. It is further submitted that co-accused Hans Raj Singh @ Hans Raj has already been granted the concession of anticipatory bail, vide order dated 16.11.2019 passed in CRM-M-47765-2019.”

For the sake of brevity, the facts are not reproduced again.

Counsel for the petitioners has further submitted that one of the co-accused of the petitioners namely Hans Raj Singh @ Hans Raj, who was also named in the FIR and was not arrested at the spot, has been granted the concession of anticipatory bail vide order dated 16.11.2019, passed in CRM-M No.47765 of 2019. It is also submitted that though both the petitioners are real brother, they are in custody for the last 09 months and 10 days and nothing was recovered from them and the conclusion of the trial will take some time.

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail. It is further submitted that till date, out of 20 PWs, no PW has been examined and the recovery was effected from the main accused Kapil Arora, who has already been granted the concession of regular bail and as per the allegations in the FIR, the petitioners who were in car, ran away from the spot. It is also not disputed that after the arrest of the petitioners, nothing incriminating was recovered from them.”

For the sake of brevity, facts are not reproduced again.

Learned counsel has further submitted that allegations against the petitioner are that he was one of the occupant of the car along with two co-accused, who have already been released on bail. It is also submitted that custody of the petitioner is 02 year and 22 days and out of total 32 prosecution witnesses, only 01 PW has been examined till date, therefore, it will take long time in conclusion of the trial.

Learned State counsel has filed the custody certificate in the Court today and on instructions from ASI Jaswinder Singh, has not disputed the fact that only 01 PW has been examined, however, it is stated that the petitioner is involved in two more cases, in which he is on bail.

After hearing learned counsel for the parties, without commenting anything on merits of the case and considering the fact that the petitioner is in long custody; out of total 32 prosecution witnesses, only 01 PW has been

examined so far and also in view of the fact that his aforesaid co-accused have already been granted the concession of regular bail, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate, concerned.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

13.04.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No