

216 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-15309-2023(O&M)

Date of Decision: 10.04.2023

Sukhvir Singh @ Sukha

...Petitioner

V/S

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

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

Mr. Gurdarshan Singh Sandhu, AAG, Punjab.

DEEPAK MANCHANDA J. Oral

Instant petition has been filed under Section 439 Cr.P.C. seeking regular bail in the case bearing FIR No.105 dated 13.10.2019 (Annexure P-1), registered under Sections 21, 27 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (and Sections 27-A of NDPS Act added later on) at police Station Special Task Force, District STF Wing.

Brief facts of the case are that on receipt of secret information one accused Sukhbir Singh @ Sukha along with his friend Malkit Singh @ Mikki, later on known as Gurmeet Singh @ Mikki, who is lodged in jail and is having mobile phone in jail, is indulging in drug trade. Malkit Singh @ Mikky through the abovesaid phone was talking with Sukhvir Singh @ Sukha regarding the supply of heroin. Both of these persons were indulged in the illegal business of selling heroin. Sukhvir Singh @ Sukha on the asking of his friend Malkit Singh @ Mikki was bringing heroin from Delhi from some Nigro at cheap rate in huge quantity and was supplying the heroin to its customers at huge rate in Ludhiana city and was sending the profit earned by him on the asking of Malkit Singh. While he was going to

supply the heroin on his motorcycle make Hero Honda Passion bearing No.PB-29-E-8535 colour black and was heading from Transport Nagar to Moti Nagar Site. Sukhbir Singh @ Sukha was apprehended with 1KG, 600 grams of heroin. On these allegations, the present FIR was registered.

Learned counsel for the petitioner contends that the applicant is innocent and has been falsely implicated in this case and is in judicial custody since 13.10.2019. He has further contended that nothing has been recovered from the possession of the applicant and the alleged recovery of 1KG 600 grams of heroin has been planted upon the petitioner. Learned counsel for the petitioner submits that challan has already been presented and charges have been framed and out of total 20 prosecution witnesses, only two witnesses have been examined till date. Learned counsel for the petitioner refers to the judgment rendered by the Apex Court in ***Maulana Mohd. Amir Rashdi vs. State of Uttar Pradesh and Another in Criminal Appeal No. 159 of 2012*** while contending that petitioner is under custody since long time in the present case and the conclusion of trial will take sufficient time, therefore, prayer is made for the petitioner to be enlarged on bail.

On the other hand, learned State Counsel on instructions from the Investigating Officer has opposed the aforesaid prayer on the ground that the petitioner is habitual offender and is involved in other cases also of similar nature. However, he does not dispute that the charges have been framed however, no prosecution witness have been examined so far.

Having heard Learned Counsel for the parties and gone through the case file and custody certificate filed by learned state counsel, it is significant to note that the petitioner is in custody for a period of 3 years, 5

months and 24 days. As per custody certificate, FIR No.172 dated 30.04.2018 under Sections 379, 411 of the Indian Penal Code at Police Station Shimlapuri pending trial wherein petitioner is on bail whereas FIR No.51 dated 22.04.2016 under Sections 22/61/85 of Narcotic Drugs and Psychotropic Substances Act at Police Station Dugri wherein the sentence of the petitioner was completed on 20.09.2018, and in another FIR No.39 dated 20.04.2015 under Section 411 of IPC at Police Station Division No.8 (Kailash Chowk) wherein the petitioner has already undergone sentence on 05.09.2022. The Hon'ble Apex Court in the **Sanjay Chandra v. C.B.I. Criminal Appeal No. 2178, 2179, 2180, 2181 and 2182 of 2011 (Arising out of SLP (Crl.) No. 5650, 5902, 6190, 6288 and 6315 of 2011)**.

“26. When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is : whether the same is possible in the present case. There are seventeen accused persons. Statement of the witnesses runs to several hundred pages and the documents on which reliance is placed by the prosecution, is voluminous. The trial may take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that accused should be in jail for an indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter us from enlarging the appellants on bail when there

is no serious contention of the respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence. We do not see any good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet. This Court, in the case of State of Kerala v. Raneef, 2011(1) RCR (Criminal) 381 : 2011(1) Recent Apex Judgments (R.A.J.) 116 : (2011)1 SCC 784, has stated :-

"15. In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the respondent has already spent 66 days in custody (as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dicken's novel A Tale of Two Cities, who forgot his profession and even his name in the Bastille.""

Investigation of the case has been completed and challan stands presented and the charges have been framed. Therefore, no useful purpose would be served by keeping the petitioner in further incarceration.

As Such, sufficient mitigating circumstances are made out to extend the concession of bail to the petitioner. Therefore, without making any expression of opinion on the merits of the case, it is ordered that the petitioner be released on regular bail. Subject to his furnishing requisite bail bonds/ surety bonds to the satisfaction of the concerned trial Court/ Chief Judicial Magistrate/ duty magistrate.

The petition is allowed

10.04.2023
sapna

(DEEPAK MANCHANDA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>