

214 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-18351-2023
Date of Decision: 31.08.2023

Har minder Singh ...Petitioner
Versus
State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
Present: Mr. P.S. Sekhon, Advocate for the petitioner.
Mr. Shiva Khurmi, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
25	04.02.2020	STF Phase-IV (Mohali), District SAS Nagar (Mohali)	21, 29 of NDPS Act and 207 of the Motor Vehicles Act, 1988

1. The petitioner incarcerated for violating the above-mentioned provisions of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) per the FIR captioned above, has come up before this Court under Section 439 CrPC seeking bail.
2. Counsel for the petitioner seeks bail on the ground that the petitioner’s custody is 3 years, 6 months and 23 days. Hence pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
3. While opposing the bail, the State counsel submits that as per the custody certificate dated 29.08.2023, there are two more cases pending against the petitioner one is under Prisons Act and another is under Section 304 IPC. In addition to the criminal history, the State contention is that the trial is at an advanced stage and any observation made by this court might impact its outcome.

REASONING:

4. The prosecution’s case is that on receipt of prior information, the police officials laid down a barricade on 04.02.2020. They detected one Dzire car and signalled it to stop. The car was being driven by the petitioner. After that, the Investigator gave him an offer under Section 50 of the NDPS Act and he desired the search by Dy.S.P. In the

presence of Dy.S.P. the search of the car was conducted and the police recovered 1.20 Kg of heroin.

5. Counsel for the petitioner places reliance upon the judgment of Hon'ble the Supreme Court in the case of ***Subhabrata Roy @ Bapi Roy @ Roy Bapi Versus The State of West Bengal, SLP (Crl.) No.4637 of 2023, decided on 18.07.2023*** and submits that in the said case under NDPS Act, the trial was at an advanced stage and the petitioner in that case had a criminal history and despite that Hon'ble the Supreme Court had granted bail after the custody of one year.

6. The State counsel opposes the bail by submitting that consideration of cough syrup in ***Subhabrata Roy @ Bapi Roy @ Roy's case (supra)***, would be hardly Rs.2000/-, whereas, in the present case, the tentative price of around 1 Kg of heroin is more than Rs.1.00 Crore and further the impact of the drug, if was spread and sold to the society would have been catastrophic, which cannot be compared with the cough syrup.

7. I have gone through the judgement of ***Subhabrata Roy @ Bapi Roy @ Roy's case (supra)***, and in the said case, the quantity which was involved 28 bottles of cough syrup, whereas, in the present case, the quantity is involved 1.20 Kgs of heroin, which is four times of the commercial quantity. Thus, the petitioner is not entitled to bail in the light of the aforesaid judgment passed by Hon'ble the Supreme Court, which does not apply in favour of the petitioner given the massive difference of the nature of the contraband i.e. in ***Subhabrata Roy @ Bapi Roy @ Roy's case***, it was just cough syrup, whereas, in the present case it is more than 1 Kg of heroin.

8. A perusal of the bail petition and the documents attached, prima facie points towards the petitioner's involvement and trial is at advance stage, no case for bail is made out.

9. The trial is at an advance stage, and any observation by this court at this stage might prejudice the prosecution, complainant, or the accused.

10. Given above, the petitioner fails to make a case for bail.

11. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

The petition is dismissed. All pending applications, if any, stand closed. However, considering the petitioner's right to speedy trial coupled with the pre-trial incarceration,

this court requests the concerned trial court to make all endeavours to conclude the trial by Oct 31, 2023, of which the prosecution evidence be completed by Sep 30, 2023, and the remaining time to provide an opportunity to the accused to lead defence evidence, if so desired, and to conclude its hearing. To meet the deadline, an endeavour be made to speed up the process for service and to pass the necessary directions in this regard. It is clarified that if expediting this trial disturbs the docket of the concerned court, then a balance be struck, and if, on this account, any delay happens, then an extension can be sought by mentioning such reasons. It is clarified that this order speeding up the trial is subject to the condition that neither the petitioner shall seek any adjournment nor try to use any tactics to delay the trial. If they do so, this order of expediting the trial shall stand automatically recalled by resorting to Section 362, read with Section 482 Code of Criminal Procedure, 1973, without any further reference to this court. If any of the accused is on bail and fail(s) to attend the trial without any sufficient cause, then they be dealt with strictly but in accordance with law. It is clarified that if the trial is not concluded by the date mentioned above, and if the delay is not attributable to the petitioner, then the petitioner may file an application for bail before the trial court, which shall decide it expeditiously and consider the bail on the grounds of pre-trial custody, and all the previous orders of dismissal passed by the trial court or High Court shall not come in the way.

(ANOOP CHITKARA)
JUDGE

31.08.2023
Jyoti-II

Whether speaking/reasoned: Yes
Whether reportable: No.