

In the High Court for the States of Punjab and Haryana
At Chandigarh

CRM-M-18950-2023 (O&M)
Date of Decision:-10.5.2023

Harishankar ... Petitioner

Versus

Narcotics Control Bureau, Chandigarh ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Gurbir Singh Sandhu, Advocate for the petitioner.

Mr. Rajiv Sharma, Advocate for the respondent.

Case Complaint No.	Dated	Police Station	Section/s
19	24.4.2019	NCB, Zonal Unit, Chandigarh	8, 18, 29 and 60 of Narcotic Drugs and Psychotropic Substances Act, 1985

GURVINDER SINGH GILL, J. (Oral)

CRM-21080-2023

The application is allowed as prayed for subject to all just exceptions.

CRM-21083-2023

In view of the reasons mentioned in the application, the same is allowed and reply on behalf of the respondent as well as documents annexed with the application are taken on record subject to all just exceptions.

CRM-M-18950-2023 (Main Case)

1. The instant petition has been filed on behalf of the petitioner seeking grant of regular bail in respect of aforementioned case complaint.
2. It is the case of prosecution that on 23.4.2019 pursuant to receipt of secret information three persons namely Hari Shanker (petitioner), Rajesh Kumar and Rahul were apprehended who were found in possession of 4.65 kilograms of “*Opium*”. It is further the case of prosecution that during interrogation they disclosed that the said “*Opium*” was to be delivered to the Nirmal Singh, Gurmail Singh and Lakhwinder.
3. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. It has further been submitted that the petitioner has been behind bars for a substantial period of more than 4 years and since the trial is proceeding at snail’s pace, the petitioner cannot be kept behind bars for an indefinite period.
4. Opposing the petition, learned State counsel has submitted that since it is a case, wherein the petitioner was caught red-handed while in possession of ‘commercial’ quantity of contraband, no case for grant of bail is made out. Learned State counsel has, however, informed that the petitioner as on date has been behind bars since the last more than 4 years. It has also been informed that the petitioner happens to be involved in one more case registered for offence under Section 498-A of Indian Penal Code. It has also been informed that only 3 PWs out of the cited 30 PWs have been examined till date.
5. This Court has considered the rival submissions addressed before this Court.

6. Since the petitioner seeks grant of bail mainly on account of long custody, it is apposite to refer to a few judgments of Hon’ble Supreme Court in this regard wherein Hon’ble Supreme Court has granted the concession of bail solely on ground of long custody :-

Case Number	Date of Decision	Title of case	Period which the accused had undergone when granted bail by Hon’ble Supreme Court.
Criminal Appeal No. 245/2020	07.02.2020	Chitta Biswas @ Subhas Vs. the State of West Bengal	1 year and 7 months
Criminal Appeal No. 668/2020	12.10.2020	Amit Singh Moni Vs. State of Himachal Pradesh	2 years and 7 months
Special Leave to Appeal (Crl.) No. 5769/2022	01.08.2022	Nitish Adhikary @ Bapan Vs. the State of West Bengal	1 year and 7 months
Special Leave to Appeal (Crl.) No. 4173 of 2022	04.08.2022	Shariful Islam @ Sarif Vs. the State of West Bengal	1 year and 6 months
Criminal Appeal No. 1169 of 2022	05.08.2022	Gopal Krishna Patra @ Gopalrusma Vs. Union of India	2 years 1 month and 17 days
Special Leave to Appeal (Crl.) No. 5530-2022	22.08.2022	Mohammad Salman Hanif Shaikh Vs. the State of Gujarat	About 2 years
Criminal Appeal No. 2027-2022	22.11.2022	Karnail Singh Vs. The State of Odisha	1 Year and 8 months
Special Leave to Appeal (Crl.) No. 8653-2022	25.11.2022	Karim Adaldar Vs. The State of West Bengal	10 months

7. Hon’ble Supreme Court in yet another judgment dated 25.1.2023 arising out of SLP No.6690-2022 titled Dheeraj Kumar Shukla Vs. State of Uttar Pradesh has granted bail in a case registered under the NDPS Act where the accused alongwith co-accused was found in possession of ‘commercial’ quantity of ‘Ganja’ and had been behind bars since the last two and a half years while observing that in the absence of any criminal antecedents, the

conditions of Section 37 of the NDPS Act could be dispensed with at that stage, particularly when there was delay in conclusion of trial.

8. In yet another case titled Chet Ram @ Ram Veer Versus Union of India (Special Leave to Appeal (Crl.) No(s).1166/2023) decided on 15.3.2023, Hon’ble the Supreme Court granted bail to the petitioner, accused of possessing a ‘commercial’ quantity of contraband, who had been behind bars since the last about 3 1/2 years and wherein only 1 PW out of cited 10 PWs had been examined despite the fact that he was involved in another case for offence under NDPS Act on the ground that the trial was not likely to be concluded immediately.
9. Having regard to the aforesated position, wherein only 3 PWs out of the cited 30 PWs have been examined although the petitioner has been behind bars since the last more than 4 years, conclusion of trial is likely to consume time. The petitioner is not stated to be involved in any other case under NDPS Act. The co-accused namely Rahul has already been granted bail by this Court vide order dated 29.3.2023 passed in CRM-M-32217-2022 (Annexure P-5). In these circumstances, the petitioner also deserves the same concession on ground of parity.
10. The petition, as such, is allowed and the petitioner is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.
11. It is, however, directed that in case the petitioner is found to be indulging in similar offence again, the prosecution would be at liberty to move an application for cancellation of bail before this Court.

10.5.2023

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No