

249-a      **IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CRM-M-20389-2022**  
**Decided on:-01.03.2023**

Anil Kumar

....Petitioner..

vs.

Narcotics Control Bureau, Chandigarh

....Respondent.

**CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

Present:      Mr. R.S. Rai, Sr. Advocate with  
                 Mr. Karan Pathak, Advocate and  
                 Mr. Vishal Sharda, Advocate,  
                 for the petitioner.

Ms. Gurmeet Kaur Gill, Advocate,  
for respondent-NCB.

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**HARKESH MANUJA J. (Oral)**

By way of present petition filed under Section 439 Cr.P.C., the petitioner prays for grant of regular bail in NCB Crime No.49 dated 18.12.2018, under Sections 8, 20, 25, 27-A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station NCB Zonal Unit, Chandigarh.

As per the allegations levelled in the complaint based on a secret/specific information dated 18.12.2018, the petitioner along with his co-accused, namely, Joginder Singh was apprehended near Chandigarh side i.e. edge of Khudda Lahora Bridge, Chandigarh in their vehicle bearing registration No.HP-49-A1008 and were later found in possession of 16.5 kg of charas.

Upon completion of investigation in the aforesaid complaint,

challan was filed on 12.06.2019 followed by framing of charges vide order dated 25.02.2020 and the trial is now fixed for 17.03.2023.

Learned counsel for the petitioner submits that the petitioner is behind the bars for the last 4 years and 2 months now and the investigation already stands concluded followed by framing of charges. He further submits that out of total of 25 witnesses as cited by the prosecution, only 6 have been examined so far and, thus, the trial is likely to take some time. Learned counsel further refers to an order dated 05.09.2022 passed by learned Judge Special Court, Chandigarh, wherein, the respondents have been cautioned for not producing the prosecution witnesses and the same is reproduced hereunder:-

*“No PW is present. Almost all the prosecution witnesses are the officials of NCB. These witnesses are not being produced for the reasons unknown. On the other hand charge sheet has been served upon the accused in February 2020. Since then only three witnesses have been produced by the NCB. Seven opportunities have been availed. Three accused are in custody for a long period of time. In the said circumstances last opportunity is granted to examine the prosecution witnesses. Adjourned to 21.09.2022 for Pws. Ahlmad to issue the summons immediately. Ld. Special PP for the NCB is also directed to inform the concerned Head of Department to direct the NCB officials to come present on the date fixed.*

*Date of order: 05.09.2022*

*(Jagdeep Sood)  
Judge Special Court,  
CHD/UID No.PB0169”*

On the other hand, prayer made in the present petition has been vehemently opposed at the instance of learned counsel representing the respondent, who on instructions from Mr. Amit Tomar, Intelligence Officer, NCB submits that out of 25 witnesses as cited by the prosecution, 6 already stand examined, whereas, 02 have been given up and next date of hearing

before the trial court is 17.03.2023 and thus, trial is likely to conclude soon.

I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the petitioner.

Though, an effort has also been made by the petitioner to dispute the entire sequence narrated by the respondent-NCB in the complaint while submitting that the petitioner was never apprehended from Chandigarh and he was taken into custody from Himachal Pradesh, however, at this stage, I am unable to go into the aforesaid aspect of the matter as the same is already subjudice before this Court in CRM-M-26377-2019, titled as “Baldev Kumar vs. State of of UT., Chandigarh and others”, which is pending for 27.07.2023.

Above and beyond, the investigation in the present case already stands concluded with the filing of challan, charges were framed way-back on 25.02.2020 and so far only 6 witnesses have been examined, 02 have been given up, out of total of 25 as cited by the prosecution, thus, the trial is likely to take some time.

Considering the fact that the petitioner is already behind the bars for the last 04 years and 2 months now, there does not appear to be any justification to extend the incarceration of the petitioner, particularly in view of the order dated 05.09.2022 passed by Judge Special Court, Chandigarh, which has already been reproduced in the preceding part of this order, which clearly reflects that the delay in trial, if any, is not attributable to the petitioner. Reliance can be placed upon the law laid down by Hon'ble the Supreme Court in “Special Leave to Appeal (Crl.) No.5530/2022, titled as

**“Mohammad Salman Hanif Shaikh vs. The State of Gujrat”,** Special Leave to Appeal (Crl.) No.4173/2022, titled as **“Shariful Islam @ Sarif vs. The State of West Bengal”** and Special Leave to Appeal (Crl.) No.5769/2022, titled as **“Nitish Adhikary @ Bapan vs. The State of West Bengal”**.

In view of the above, without expressing any opinion on the merits of the case, the present petition is allowed. Petitioner is ordered to be released on bail, subject to his furnishing bail bonds and surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate.

01.03.2023  
sonika

(HARKESH MANUJA)  
JUDGE

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