

CRM-M-17949 of 2020

2023:PHHC:064051

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-17949 of 2020
Date of decision: 04.05.2023

Kamal Kumar

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Naveen Bawa, Advocate,
for the petitioner.

Mr. Jashanpreet Singh, DAG, Punjab.

NAMIT KUMAR, J.

1. This petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case FIR No.104 dated 12.10.2019 under Sections 21/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Sections 25/61/85 of the NDPS Act added lateron), registered at Police Station STF, Phase-4, Mohali, District Mohali, SAS Nagar.

2. The FIR was registered on the basis of secret information to the effect that Kamal Kumar (present petitioner), Gurbinder Singh @ Vicky and Sneha @ Bandna were coming in a car for doing illicit business of sale of heroin. The naka was installed by the police and the car was stopped. From the place of gears of the car, a polythene envelope was found and the same was recovered. On weighment, 1 kg 530 grams of heroin was recovered.

250 empty transparent locked pouches were also recovered.

3. Learned counsel for the petitioner submitted that the petitioner is innocent and has been falsely implicated in the present case. He further submitted that petitioner is neither the owner nor driver of the car from which the alleged recovery has been effected. He further submitted that co-accused of the petitioner, namely, Sneha @ Bandhna and Gurbinder Singh alias Vicky have been granted regular bail by this Court vide orders dated 01.12.2022 and 17.04.2023, respectively. He submitted that petitioner is in custody since 12.10.2019. Learned counsel further submitted that investigation in the present case is complete; challan has been presented; charges have been framed; out of total 15 prosecution witnesses seven witnesses have been examined and the case is now fixed before the trial Court on 16.05.2023. Trial may take a considerable time to conclude. Therefore, no fruitful purpose would be served by detaining the petitioner behind bars.

4. Per contra, learned State counsel while placing on record custody certificate, submitted that recovery effected from the petitioner and co-accused is commercial in nature. However, he could not refute that co-accused, namely, Sneha @ Bandhna and Gurbinder Singh alias Vicky have been granted the concession of regular bail by this Court; investigation is complete, challan has been presented; charges have been framed; out of total 15 prosecution witnesses seven witnesses have been examined. He further submitted that petitioner is involved in one more case bearing FIR No.200 dated 28.08.2018 under Section 21/61/85 Of the NDPS Act, registered at Police Station Sadar Khanna, involving non-commercial

quantity of the contraband, in which he is on bail.

5. Learned counsel for the petitioner submitted that mere pendency of other cases cannot be made ground to deny the bail to the petitioner in view of the judgment of the Hon'ble Supreme Court in **Maulana Mohd. Amir Rashadi Vs. State of U.P. and another, 2012 (2) SCC 382**, wherein it has been held as under: -

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

6. I have heard learned counsel for the parties and perused the record.

7. In view of the custody period undergone by the petitioner, 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

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Special Leave to Appeal (Crl.) No.5187 of 2021	10.11.2021	Kulwant Singh Vs. The State of Punjab	More than 2 years
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 Gurjarat	About 2 years
Special Leave to Appeal (Crl.) No.7840 of 2022	31.10.2022	Shahjad Vs. The State of Uttar Pradesh	About 2 years

8. Keeping in view the custody of the petitioner, which is 03 years 06 months and 22 days; co-accused Sneha @ Bandhna amd Gurbinder Singh alias Vicky have already been granted regular bail; investigation is complete; challan has been presented; charges have been framed and out of 15 prosecution witnesses only 07 witnesses have been examined and trial is likely to take a considerable time, however, without commenting upon the merits of the case, the petitioner is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court. However, in addition to conditions that may be imposed by the trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions: -

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence oral or

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documentary during the trial.

- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence similar to the one alleged in the present case.
- (v) The petitioner shall deposit his passport, if any with the trial Court.
- (vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.
- (vii) The petitioner shall not in any manner try to delay the trial.

9. In case of breach of any of the aforesaid conditions and those which may be imposed by the trial Court, the prosecution shall be at liberty to move an application for cancellation of bail of the petitioner.

10. The petition stands disposed off accordingly.

04.05.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No