

2023:PHHC:143662

219(2) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-26905-2021

Date of decision: 09.11.2023

HARJINDER SINGH @ KALAKAR

...PETITIONER

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: Mr. Navraj Singh, Advocate for the petitioner.

Mr. Parneet Singh Pandher, AAG, Punjab.

DEEPAK GUPTA J. (ORAL)

Custody certificate has been filed by the respondent-State and the same is taken on record.

2. On 21.04.2022, the following order was passed by this Court:-

"Learned State counsel submits that the reply filed by the State to CRM-M-8819 of 2021 (listed at sr. no.201 today), be also accepted to be the reply in this case, as both the bail petitions arise out of the same FIR and with the petitioners having been arrested together.

Learned counsel for the petitioner submits that the petitioner has been in custody for more than 2 years and 10 months even as per the custody certificate filed in court today by learned State counsel, with no other criminal case shown to be registered against him and that ten prosecution witnesses still remaining to be examined, with only four having been examined so far.

He therefore relies upon an order passed by the Supreme Court in Criminal Appeal no.668 of 2020 (Amit Singh Moni v. State of Himachal Pradesh) on 12.10.2020, admitting the appellant before the Apex Court to bail, who had also been arraigned as an accused on charges of having committed offences punishable under Sections 20 and 29 of the NDPS Act, 1985.

A perusal of that order shows that charas weighing 3285 grams was found concealed (as per the case of the prosecution), in the vehicle in which the accused was travelling, but with the Supreme Court having directed that he be admitted to bail by the trial court to its complete satisfaction, he having been in custody at that stage for 2 years and 7 months, with the trial not progressing due to the Covid-19 pandemic.

It is to be observed that obviously that order would have been passed by the Supreme Court exercising jurisdiction under Article 142 of the Constitution of India, which jurisdiction is obviously not conferred on this court: and therefore unless a case is made out by the petitioner in terms of Section 37(1)(b)(ii) of the NDPS Act, 1985, I would find no reason to actually admit the petitioner to bail absolutely.

Though learned counsel for the petitioner has also submitted that a joint offer was given to both the petitioners as regards their personal search, learned counsel for the State submits that even as per the reply filed, actually separate offers were given.

Be that as it may, the period of custody having been 2 years and 10 months and the trial obviously not anywhere near conclusion as yet, at this stage it is considered appropriate to admit the petitioner to interim bail, especially as he has no other criminal antecedents shown in the custody certificate filed in court today, till the next date of hearing before this court, upon him furnishing adequate bail and surety bonds to the complete satisfaction of the trial court, which would obviously be at liberty to impose whatever condition as it considers necessary to be imposed upon him, at the time of his admission to bail.

That court would also send a report to this court one week before the next date of hearing, as to the exact stage of the trial and the time frame likely for its conclusion, subject to of course prosecution witnesses (normally all police officials), appearing before it as and when summoned.

Adjourned to 05.07.2022."

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3. Today, it is informed by learned State counsel that trial is now at fag end as much as even the arguments have been heard and case is fixed for pronouncement of orders.

4. In view of the aforesaid, the order dated 21.04.2022, whereby the petitioner was granted interim anticipatory bail, is hereby made absolute. However, he shall continue to join investigation, if and so required by the Investigating Officer.

Disposed of.

November 09, 2023
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(DEEPAK GUPTA)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |