

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

(209)

CRM-M-23637-2023

Date of decision: - 31.05.2023

Shinder Pal Singh**....Petitioner****Versus****State of Punjab****.....Respondent****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. Amandeep Rana, Advocate
for the petitioner.

Mr. Rohit Ahuja, DAG, Punjab.

VIKAS BAHL, J. (ORAL)

1. This is the second petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.133 dated 02.11.2021, registered under Sections 15(c) and 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985, at Police Station Bhogpur, District Jalandhar.

2. The present FIR has been registered on the basis of ruqa sent by the Sub-Inspector Navdeep Kaur to the effect that she alongwith ASI Satpal Singh and other police officials were in a Government Vehicle and were patrolling the area when, secret informer came, and informed them that Chaman Lal (co-accused) and Shinder Pal Singh (petitioner), commuting in a Canter bearing registration No.PB-23M-7691, being the driver and cleaner of the same respectively, were carrying poppy husk by

hiding the same under boxes of apples, which they were transporting from Srinagar and were to supply the same to the customers in Jalandhar and in pursuance of the said secret information, the barricades were set up and during checking, at the 'naka', the abovesaid canter was intercepted and the said co-accused Chaman Lal and petitioner were apprehended, and thereupon, the recovery of 110 kg of poppy husk from the canter was effected.

3. Learned counsel for the petitioner has submitted that the petitioner is in custody since 02.11.2021 and out of total 13 prosecution witnesses, only two have been examined and thus, the trial is likely to take long time. It is further submitted that the petitioner is not involved in any other case and the previous bail application of the petitioner was withdrawn at that stage on 15.03.2022 and even subsequent to the same, sufficient time has elapsed and the trial has not concluded, thus, entitling the petitioner to file the present bail petition. It is submitted that co-accused of the petitioner, namely, Chaman Lal, who is similarly placed as the present petitioner, has been granted the concession of regular bail by the Co-ordinate Bench of this Court, vide order dated 13.01.2023 passed in CRM-M-28227-2022.

4. Learned counsel for the petitioner has relied upon a judgment of Coordinate Bench of this Court passed in “**Mehtab Singh @ Mehtaba Vs. State of Punjab**”, reported as 2000(2) RCR (Criminal) 228 to contend that that on the ground of parity, the petitioner deserves to be granted the concession of regular bail.

5. Learned State counsel, on the other hand, has opposed the

present petition for grant of regular bail and has submitted that the recovery of commercial quantity has been effected from the petitioner and co-accused, namely, Chaman Lal and thus, the bar under Section 37 of the NDPS Act would apply. The other facts, however, have not been disputed by learned State counsel.

6. This Court has heard learned counsel for the parties and has perused the paper book.

7. The petitioner is in custody since 02.11.2021 and out of total 13 prosecution witnesses, only two have been examined and thus, the trial is likely to take long time. The petitioner is stated to be not involved in any other case and co-accused of the petitioner, namely, Chaman Lal, who is similarly placed as the present petitioner, has been granted the concession of regular bail by the Co-ordinate Bench of this Court, vide order dated 13.01.2023 passed in CRM-M-28227-2022 (Annexure P-7).

Relevant portion of the said order is reproduced herein below: -

“Learned counsel for the petitioner submits that the other co-accused, namely, Ranjit, Sukhdev Raj @ Sukha, Tarsem Masih and William @ Lucky have already been granted regular bail by a co-ordinate Bench of this Court vide order dated 21.12.2021 passed in CRM-M-50393-2021; vide order dated 1.2.2022 passed in CRM-M-3293-2022; order dated 3.2.2022 passed in CRM-M-1677-2022; and order dated 10.2.2022 passed in CRM-M-4625-2022, respectively and also submits that the petitioner is not involved in any other case except in the present FIR. Learned counsel for the petitioner has also raised an argument that the above FIR was registered prior to the alleged recovery of the contraband or the number of FIR was inserted in the document after its registration. However, in both the situations, it seriously reflects upon the integrity of the prosecution version.

*To support his contentions, learned counsel for the petitioner has relied upon the judgements passed by this Court in **Didar Singh***

@ Dara vs. The State of Punjab, 2010(3) RCR (Criminal) 337; Ajay Malik & Ors. vs. State of U.T., Chandigarh, 2009(3) RCR (Criminal) 649; Rajandeep Singh @ Ghughi vs. State of Punjab, CRM-M-36504 of 2020, decided on 28.1.2021; Gurpreet Singh @ Mani vs. State of Punjab, 2022 (2) RCR (Criminal) 585; Gurpreet Singh vs. State of Punjab, CRM-M-48050-2021, decided on 7.2.2022, Akashdeep Singh @ Akash vs. State of Punjab, CRM-M-15971-2022, decided on 13.5.2022.

Learned counsel for the petitioner further submits that challan has already been presented and charges have been framed on 5.5.2022 and out of total 13 prosecution witnesses, till date only 1 witness has been examined and the trial would take sufficient time to conclude and therefore, the petitioner be released on regular bail during the pendency of the trial.

The custody certificate has been furnished by the respondent-State and the same is taken on record.

Per contra, learned counsel appearing on behalf of respondent-State, on instructions from ASI Ram Kishan, opposes the grant of regular bail to the petitioner, while submitting that the offence alleged against the petitioner is serious in nature, but does not dispute the fact that charges have been framed, however, only 01 prosecution witness has been examined till date.

I have heard the learned counsel for the parties.

The petitioner has been in custody since 06.11.2021.

It is not a case made out by the respondent-State that the concession of bail if granted to the petitioner would hamper the course of free and fair trial. Further as per contentions and arguments raised by learned counsel, the arguable points are involved which shall be dealt during the trial. But since charges have already been framed and only 1 prosecution witness has been examined out of total 13, the trial would take sufficient time and no useful purpose would be served in keeping the petitioner behind bars.

Resultantly, without meaning any expression of opinion on the merits of the case, it is ordered that the petitioner be released on regular bail in the above case, subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court concerned.

The petition is allowed.

(DEEPAK MANCHANDA)
JUDGE

January 13, 2023”

8. It is not in dispute that the case of the present petitioner is on parity with the said co-accused Chaman Lal.

9. Coordinate Bench of this Court in Mehtab Singh @ Mehtaba's case (supra) has held as under:-

*“But the learned counsel for the petitioner, on the other hand, contends that the co-accused Amrik Singh who is similarly placed, has been granted bail by this Court by order dated 3.5.1999 and, therefore, the same concession can be extended to the petitioner also. In this connection, the learned counsel for the petitioner relied upon a decision of the Madhya Pradesh High Court in **Vishnu Ram Chandra Maheshwari v. State of M.P., 1999(3) All India Criminal Law Reporter 645** wherein it was held that generally rule of consistency requires that if a co-accused has been granted bail by the Court and the case against the applicant before the Court is similar and identical, he should be granted bail. That was also a case where the accused whose application for bail was earlier dismissed, but was subsequently granted bail on the ground of parity in view of the fact that the co-accused whose case is also similar and identical, had been granted bail. That decision squarely applies to the facts of the case in hand.”*

10. Keeping in view the above said facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him not being required in any other case. The petitioner shall also abide by the following conditions:-

- i). The petitioner will not tamper with the evidence during the trial.

- ii). The petitioner will not pressurize/intimidate the prosecution witness(s).
- iii). The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
- iv). The petitioner shall not commit an offence similar to the offence of which he is accused, or for commission of which he is suspected.
- v). The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer or tamper with the evidence.

11. However, it is made clear that in case, any act is done by the petitioner to threaten the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

12. Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

May 31, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes