

207 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-30248-2021 (O&M)

Date of Decision: 18.01.2023

GURINDER SINGH

... PETITIONER

VS.

STATE OF PUNJAB

.. RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr.Yashpal Thakur, Advocate, for the petitioner.

Ms. Ruchika Sabherwal, DAG, Punjab.

VIVEK PURI, J.(ORAL)

The petitioner is seeking regular bail in the case bearing FIR No.06 dated 20.01.2020 under Section 22 of the NDPS Act (Section 29 of the NDPS Act added subsequently) registered at Police Station Khamano, Tehsil Khamano, District Fatehgarh Sahib.

Custody certificate has been placed on record.

Briefly, as per the allegations 800 tablets of microlit and 21 vials of rexorid have been recovered from the possession of the petitioner.

Learned counsel for the petitioner contends that the petitioner is in custody for a period of 02 years, 11 months and 29 months and not involved in any other case. Furthermore, the partial offer was given to the petitioner and he was not given any offer of the search in the presence of Gazetted Officer. Counsel for the petitioner has relied upon the decisions of Hon'ble the Supreme Court of India rendered in Criminal Appeal No. 668 of 2020 titled as Amit Singh Moni Vs. State of Himachal Pradesh, wherein bail has been granted to the accused in a case pertaining to the recovery of commercial quantity, after he had completed more than 02 years and 07 months of actual custody. Furthermore, it has been argued that in SLP (Crl.) No. 5769 of 2022 titled as Nitish Adhikary @ Bapan vs. The State of West Bengal; decided on 01.08.2022 by the Hon'ble Supreme Court of India, the accused was granted bail in a case pertaining to the recovery of commercial quantity after he had undergone custody for a period of 1 year and 7 months and trial was at a preliminary stage, as only 1 witness had been examined and the accused was not having criminal antecedents. Besides, in a decision

rendered in SLP (Crl.) No. 4173 of 2022, decided on 04.08.2022 titled as Shariful Islam Vs. Sarif Vs. The State of West Bengal, the accused was granted bail after he had suffered incarceration for over 1 year and 6 months and there being no likelihood of completion of trial in near future.

Learned State counsel has opposed the bail application on the score that it is not a case of personal search and the recovery was effected from the bag which the petitioner was holding in his hand. As such, provisions of Section 50 of the NDPS Act are not attracted in the instant case. It has not been disputed that the petitioner is in custody for a period of 02 years, 11 months and 09 days and furthermore, so far, out of 17, only 04 witnesses have been examined.

Be that as it may, the petitioner is in custody for a period of 02 years, 11 months and 29 days. The trial is not progressing. The speedy trial is a constitutional right provided to an accused under Article 21 of the Constitution of India. Moreover, consent memo (Annexure P-2) indicates that partial offer was given to him. Its effect on the trial, if any, is to be adjudicated by the trial Court at the appropriate stage.

In such circumstances, sufficient grounds are made out to extend the concession of bail to the petitioner. Accordingly, without making any observation on the merits of the case, the present petition is allowed and petitioner is ordered to be released on bail, subject to his furnishing bail/surety bonds to the satisfaction of concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

18.01.2023
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(VIVEK PURI)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether Reportable	: Yes/No