

211 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-30772-2021 (O&M)

Date of decision: 25.01.2023

Kulwinder Singh @ Kinda

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. J.S. Dhaliwal, Advocate
for the petitioner.

Mr. Anup Singh, A.A.G., Punjab.

NAMIT KUMAR, J.

CRM-23284-2021

Allowed as prayed for.

CRM-M-30772-2021

This petition has been filed under Section 439 Cr.P.C. seeking regular bail in a case bearing FIR No.26 dated 11.02.2021 under Section 22 of the NDPS Act registered at Police Station City 2 Mansa, District Mansa (Annexure P-1).

The case of the prosecution is that on 11.02.2021; the police party headed by ASI Gurtej Singh along with other police officials was present at CIA Staff, Mansa. He received a telephonical information from ASI Pal Singh that he along with police party was going in connection with the patrolling and when the police party reached in the area of Mansa Khurd, Police party saw a person who was having a bag of black colour on his right shoulder. On seeing the police party, he tried to run away. He was apprehended by the police party on the suspicion that he is carrying some narcotic substance. He requested him to reach at the spot.

On receiving the information, ASI Gurtej Singh along with police party

reached at the spot and enquired from the apprehended person who disclosed his name as Kulwinder Singh @ Kinda son of Nacchatar Singh resident of village Heere Wala. Recovery of 1000 tablets of Celcidal-100 SR was recovered from his possession. Hence this FIR.

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. He is in custody since 11.02.2021; investigation is complete; challan has been presented; charges have been framed; out of 12 witnesses 10 have been examined and two have been given up and the case is fixed for defence evidence for today.

Per contra, the learned State counsel has filed the custody certificate which is taken on record and submits that the petitioner is involved in two other cases. However, learned counsel for the petitioner submits that in one of the cases, he has been acquitted and in another case, he is on bail, details of the FIRs and their status is given below:-

Sr. No.	FIR No.	Date	Under Section	Police Station	Status
1	97	07/12/16	392/323/506/148/149 of IPC	Kot-Dharmu	Acquitted
2	83	21/06/2019	78(2)/61/1/14 of Excise Act	Jhunir	Pending

The learned State counsel further opposed the contentions made by learned counsel for the petitioner and submitted that since the quantity is commercial in nature, therefore, the petitioner is not entitled for grant of bail. However, he could not refute the fact that the petitioner is in custody since 11.02.2021 and out of total 12 witnesses 10 have been examined and the trial is likely to take considerable time to conclude.

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

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
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

The Supreme Court in 'Satender Antil Vs. Central Bureau of Investigation & another' AIR 2022 SC 3386 has in the case of commercial quantity enlarged the accused on regular bail keeping in view the long custody period.

Keeping in view the period of incarceration, investigation is complete; challan has been presented; charges have been framed; out of 12 witnesses 10 have been examined and two have been given up and the likelihood of trial being prolonged. Culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner.

Thus, without commenting upon the merits of the case, the present petition is allowed and 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.

The present petition stands disposed off accordingly.

25.01.2023

Neha

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No