

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

216-CRM-M-27838-2023 (O&M)

Date of Decision: 02.06.2023

RAJESH KUMAR

... Petitioner

VS.

N.C.B.

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. GS Sandhu, Advocate for the petitioner

Sandeep Moudgil, J. (Oral)

CRM-25801-2023

Allowed as prayed for.

CRM-25802-2023

Reply along with documents filed by the respondent is taken on record.

CRM stands disposed of.

Main case (O&M)

The petitioner seeks regular bail in case complaint No.19 dated 24.04.2019 under Sections 8/18/29/60 of Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station NCB Zonal Unit, Chandigarh.

It is the case of prosecution that on 23.4.2019 pursuant to receipt of secret information three persons namely Hari Shanker, Rajesh Kumar (petitioner) and Rahul were apprehended who were found in possession of 4.65 kilograms of "Opium". It is further the case of the prosecution that during interrogation they disclosed that the said "Opium" was to be delivered

to the Nirmal Singh, Gurmail Singh and Lakhwinder. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. It has further been submitted that the petitioner has been behind bars for a substantial period of about 4 years and since the trial is proceeding at snail's pace as only 6 PWs out of the cited 30 PWs have been examined till date, the petitioner cannot be kept behind bars for an indefinite period. Learned counsel for the petitioner has submitted that the petitioner is not involved in any other case. He sought parity with the co-accused Rahul who has been granted regular bail by this Court in CRM-M-32217-2022 vide order dated 29.03.2023.

Notice of motion.

On the asking of the court, Mr. Rajiv Sharma, Advocate for the NCB accepts notice. He has filed custody certificate dated 01.06.2023 which is taken on record. According to the same, the petitioner has undergone 4 years 1 months 5 days of custody. He has been found involved in another NDPS case. Mr. Shrama further submitted that since it is a case, wherein the petitioner was caught red-handed while in possession of 'commercial' quantity of contraband, no case for grant of bail is made out. He further averred that out of total 30 witnesses, only 6 witnesses have been examined so far.

Having heard learned counsel for the respective parties, this Court is of the considered view that since the petitioner has already suffered sufficient period in custody and as per the principle of the criminal jurisprudence, no one should be considered as guilty till the guilt is proved

beyond reasonable doubt, whereas in the instant case, trial is prolonged and likely to take long time in the light of the fact that out of 30 prosecution witnesses, only 6 have been examined and detaining the petitioner behind the bars for an indefinite period would amount to violation of Article 21 of the Constitution of India and is against the principle “Bail is a rule, jail is an exception” as elucidated in the judgement of Apex Court in “*Dataram Singh vs. State of Uttar Pradesh and another;*, (2018) 3 SCC 22”.

In the light of the aforesaid facts and circumstances as discussed above and the orders passed by the Apex Court in Nitish Adhikary @ Bapan vs. State of West Bengal SPL (Crl) No.5769 of 2022 decided on 01.08.2022 and Dheeraj Kumar Shukla vs. State of Uttar Pradesh, SPL (Crl.) No.6690/2022 decided on 25.01.2023, when the petitioner has faced reasonable time behind the bars wherein the trial is likely to take long time and particularly when no useful purpose would be served keeping the petitioner behind the bars, the petitioner is directed to be released on regular bail on furnishing bail and surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate concerned.

The present petition is, therefore, allowed.

02.06.2023
V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No