

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-28781-2022 (O&M)
Date of Decision:-04.08.2023

CHHINDERPAL @ MONU

... Appellants/Petitioner(s)

Versus

STATE OF PUNJAB

... Respondent(s)

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CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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Present:- Mr. K.S. Brar, Advocate
for the petitioner.

Mr. Rohit Ahuja, DAG, Punjab.

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KARAMJIT SINGH, J. (Oral)

1. Prayer is for grant of regular bail in case having FIR No.93 dated 10.8.2021 registered under Sections 21, 29 of NDPS Act at Police Station Kulgarhi, District Ferozepur.
2. The brief facts of the case are that 500 grams of heroin was recovered from a car in which the petitioner, Sandeep Kumar and Wilson were travelling on 10.08.2021. During investigation, some other person was also arrested by the police.
3. Counsel for the petitioner submits that the petitioner has been falsely implicated in the present case and that no contraband was recovered

from conscious possession of the petitioner. It is further submitted that the petitioner is in custody for the last about 2 years and the trial is not progressing ahead and that no purpose is going to be served by detaining the petitioner in custody for any longer period. So prayer is made that petitioner be released on bail. In support of his contentions, the counsel for the petitioner has placed reliance on **Hasanujjaman & Ors. vs. The State of West Bengal, SLP (Crl.) No. 3221 of 2023, decided on 04.05.2023**, wherein also in case of commercial quantity of contraband, the accused has been granted bail on account of the fact that he was in custody for more than 1 year and 4 months. The counsel for the petitioner has also referred to order dated 18.7.2023 passed by Hon'ble Supreme Court in **SLP Criminal No.4637-2023 Subhabrata Roy @ Bapi Roy @ Roy Bapi vs. State of West Bengal**, wherein also considering the previous decisions in **Criminal Appeal No.2013 of 2022 Sabikul Kunahar @ Sabiku Nahar Mondal vs. State of West Bengal** decided on 18.11.2022, **SLP Criminal No.9064/2022 Subarta Biswas @ Subra Biswas vs. The State of West Bengal** decided on 25.11.2022, the Hon'ble Apex Court considering the fact that the accused therein was in custody for quiet some time granted him bail.

4. The present petition is resisted by the State counsel who submits that commercial quantity of contraband was recovered from the petitioner. It is further submitted that the trial is going on and that rigors of Section 37 of NDPS Act are applicable to the present case. However, the State counsel has not disputed the fact that petitioner is in custody

for the last about 2 years and is having no criminal history and that the trial is at its initial stage.

5. I have considered the submissions made by counsel for the parties.
6. As per the prosecution version 500 grams of heroin were recovered from the car, in which the petitioner was traveling along with Sandeep Kumar and Wilson and all three of them were arrested at the spot. As per the custody certificate furnished by the State counsel, the custody period of the petitioner comes out to be 1 year, 11 months and 26 days and the petitioner is having no criminal history. Till date prosecution is able to examine only 2 witnesses out of total 20 witnesses. So it will take considerable time for time trial to conclude. In the given circumstances, there is delay in trial and especially when it is not the fault of the accused, in that situation the effect of Section 37 of the NDPS Act will be diluted
7. For the forgoing reasons the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.
8. However, observation if any, made hereinabove is not to be considered as expression of opinion on the merits of the case.

04.08.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No