

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

207

CRM-M-29192-2023  
Date of decision: 19.12.2023

Akash .....Petitioner

versus

State of Punjab .....Respondent

**CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR**

Present: Mr. Sandeep Arora, Advocate  
for the petitioner.  
  
Mr. Anurag Bansal, A.A.G. Punjab  
for the respondent-State.

**NAMIT KUMAR, J. (ORAL)**

1. The petitioner has filed the instant petition under Section 439 of Cr.P.C. for grant of regular bail in case FIR No.142 dated 26.08.2020 under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Lalru, District, S.A.S. Nagar (Mohali).
2. Brief facts of the case are that on 26.08.2020, the police party headed by ASI Baljinder Singh was doing patrolling duty under bridge of Lalru. At about 5:00 p.m. two persons were seen coming on foot from the side of railway station holding bag with string in their hands who on seeing the police party became nervous and tried to turn back. On suspicion, they were apprehended and their antecedents were enquired. Out of them one disclosed his name as Akash (the petitioner) and other disclosed his name as Amarjit Singh. On their search, 180 narcotic injections make Buprenorphine 60 intoxicant injections without label were recovered from the petitioner and 240 vials of Avil were recovered from co-accused Amarjit Singh.
3. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the present case. The allegations

in the FIR are improbable because both the accused are said to be holding the strip bag together, while they were on their feet. Mandatory provisions of the NDPS Act were not complied with by the police during the search. Moreover, co-accused Amarjit Singh has already been granted regular bail by this Court vide order dated 23.09.2022 passed in CRM-M-43460-2022. He submits that petitioner is in custody since 26.08.2020. He referred to a latest judgment of the Hon'ble Supreme Court passed in ***Criminal Appeal No.943 of 2023 titled as "Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)"*** decided on 28.03.2023 to contend that when there is a long delay in the trial and especially when it is not the fault of the accused and in that situation even the effect of Section 37 of the NDPS Act will be diluted in the given facts and circumstances of each and every case. He further submits that investigation in the present case is complete; challan has been presented on 19.02.2021; charges have been framed on 06.04.2021. Out of total 15 witnesses, 12 has been examined so far. He further submits that trial may take a considerable time to conclude, therefore, no fruitful purpose would be served by detaining the petitioner behind bars.

4. Per contra, learned State counsel while placing on record the custody certificate opposes the prayer for grant of regular bail to the petitioner on the ground that recovery of 180 narcotic injections make Buprenorphine 60 intoxicant injections has been effected from the petitioner. He further submits that the petitioner is also involved in 03 other cases i.e. 01 under the NDPS Act and 02 under the Cr.P.C. He, however, submits that petitioner is in custody for the last 03 years and 02 months; investigation in the present case is complete; challan has been presented; charges have been framed and out of total 15 witnesses, 13 have been

examined so far.

5. Learned counsel for the petitioner submits that in all 03 cases pending against the petitioner, the petitioner is on bail. Relying upon the judgment of Hon'ble Supreme Court in *Maulana Mohd. Amir Rashadi Vs. State of U.P. and another, 2012 (2) SCC 382* learned counsel for the petitioner contends that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

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

7. 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<br>No.668/2020                       | 12.10.2020 | Amit Singh Moni<br>Vs. State of<br>Himachal<br>Pradesh          | 2 years and 7<br>months        |
| Special Leave to<br>Appeal (Crl.)<br>No.5187 of 2021 | 10.11.2021 | Kulwant Singh<br>Vs. The State of<br>Punjab                     | More than 2<br>years           |
| Special Leave to<br>Appeal (Crl.)<br>No.5769/2022    | 01.08.2022 | Nitish Adhikary<br>@ Bapan Vs. the<br>State of West<br>Bengal   | 1 year and 7<br>months         |
| Special Leave to<br>Appeal (Crl.)<br>No.4173 of 2022 | 04.08.2022 | Shariful Islam @<br>Sarif Vs. the<br>State of West<br>Bengal    | 1 year and 6<br>months         |
| Criminal Appeal<br>No.1169 of 2022                   | 05.08.2022 | Gopal Krishna<br>Patra @<br>Gopalrusma Vs.<br>Union of India    | 2 years 1 month<br>and 17 days |
| Special Leave to<br>Appeal (Crl.)<br>No.5530-2022    | 22.08.2022 | Mohammad<br>Salman Hanif<br>Shaikh Vs. the<br>State of Gurjarat | About 2 years                  |
| Special Leave to<br>Appeal (Crl.)<br>No.7840 of 2022 | 31.10.2022 | Shahjad Vs. The<br>State of Uttar<br>Pradesh                    | About 2 years                  |

8. The Hon'ble Supreme Court in ***Special Leave to Appeal (Crl.) No.4169 of 2023 – Rabi Prakash v. The State of Odisha decided on 13.07.2023*** has held that in case of prolonged incarceration, conditional liberty will override the statutory embargo under Section 37 of the NDPS Act as the prolonged incarceration is against fundamental right guaranteed under Article 21 of the Constitution of India.

9. Keeping in view the custody of the petitioner, which is 03 years 02 months and 19 days; investigation is complete; challan has been presented; charges have been framed and out of 15 prosecution witnesses, 13 prosecution witnesses have been examined; co-accused Amarjit Singh has already been granted regular bail by this Court and trial is likely to take

a considerable time, however, without commenting upon the merits of the case, 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. However, in addition to conditions that may be imposed by the trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions: -

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence similar to the one alleged in the present case.
- (v) The petitioner shall deposit his passport, if any with the trial Court.
- (vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.
- (vii) The petitioner shall not in any manner try to delay the trial.

10. In case of breach of any of the aforesaid conditions and those which may be imposed by the trial Court, the prosecution shall be at liberty to move an application for cancellation of bail of the petitioner.

11. The petition stands disposed of accordingly.

**19.12.2023**

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**(NAMIT KUMAR)**  
**JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No