

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.208

CRM-M-37309-2022 (O&M)

Date of decision : 01.03.2023

Balvinder Singh @ Kala

..... Petitioner

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. P.S. Sekhon, Advocate, for the petitioner.

Mr. Harkanwarjit Singh, AAG, Punjab

SUDHIR MITTAL, J. (Oral)

The petitioner seeks regular bail in case FIR No.245 dated 30.11.2021, registered at Police Station Dirba, District Sangrur, under Section 22 of the NDPS Act, 1985 (hereinafter referred to as the Act).

Learned counsel for the petitioner submits that the petitioner has undergone actual custody in excess of 01 year and there is no other criminal case pending against him. The trial is not likely to be concluded at an early date as only challan has been presented till date and examination of witnesses has not started. Moreover, Section 50 of the Act stands violated as the petitioner was not searched in the presence of a Gazetted Officer or Magistrate. Thus, he may be granted regular bail.

Custody certificate dated 28.02.2023 checked by Sh. J.S. Thind, Deputy Superintendent, District Jail, Sangrur has been submitted in Court. The same is taken on record. A perusal thereof shows that the petitioner has undergone actual custody of 01 year, 02 months and 29 days and there is no other criminal case pending against him.

Learned State counsel concedes that examination of PWs has not yet commenced. Regarding violation of Section 50 of the Act, it has been submitted that so long as an option is given to an accused and he accepts the option of being searched in the presence of the investigating officer, there is no violation of Section 50 of the Act. Reliance has been placed upon Jarnail Singh Vs. State of Punjab, 2011 (3) SCC 521.

In rebuttal, learned counsel for the petitioner has relied upon a later judgment in Gurjant Singh @ Janta Vs. State of Punjab 2013 (4) RCR (Criminal) 874.

In view of above, it is evident that the trial is not likely to be concluded at an early date and that there has been a violation of Section 50 of the Act as the later judgment in Gurjant Singh @ Janta (supra) would prevail. In view of all these facts as well as the period of custody undergone, I deem it appropriate to grant regular bail to the petitioner.

The petition is allowed and it is directed that the petitioner be released on bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

(SUDHIR MITTAL)
JUDGE

01.03.2023

Ramandeep Singh

Whether speaking / reasoned

Yes

Whether Reportable

No