

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M No.38952 of 2023 (O&M)
Date of decision: 14.12.2023

Sanjay @ Guddu

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Ms. Neeru Bansal, Advocate
for the petitioner.

Ms. Harsh Rekha Kapoor, AAG, Haryana.

NAMIT KUMAR J. (Oral)

Status report by way of affidavit of Nar Singh, Assistant Commissioner of Police, City-I, Sonapat, on behalf of respondent/State, filed in the Court is taken on record.

This 2nd petition has been filed by the petitioner under Section 439 Cr.P.C., seeking regular bail in case FIR No.32 dated 19.01.2022, registered under Sections 20, 21, 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') (Sections 18 and 29 of the NDPS Act added later) at Police Station Sadar Sector 27, District Sonapat.

Counsel for the petitioner submits that, as per the allegations, the FIR was registered on the basis of the secret information that one person (petitioner herein) who is involved in the business of narcotics, would be coming from Rishi Colony, Sonapat in his car bearing No.HR-26-U-4475, and going towards Shiv Colony, Sonapat

side, for supplying the contraband and if a raid is conducted, he could be apprehended. Thereafter, a naka was laid down by the police party and he was arrested and disclosed his name as Sanjay @ Guddu and recovery of 1.119 Kgs. of Opium and 33.940 Kgs. of Ganja, was effected from him.

Counsel for the petitioner *inter alia* contends that the petitioner is innocent and has been falsely implicated in the present case. He is in custody for the last 01 year, 10 months and 20 days. She further submits that in the present case, the sample was taken at the time of seizure on 19.01.2022 and the same was sent to the Forensic Science Laboratory (FSL) only on 27/28.01.2022 i.e. after a delay of about 09 days and the report of FSL was received on 31.10.2022, which is in violation of the Standing Order No.1 of 1988 dated 15.03.1988, which clearly mandates that the samples have been sent for analysis to the FSL, within 72 hours, from the date of seizure. She also placed reliance upon the judgment of the Hon'ble Supreme Court "**Noor Aga vs State of Punjab and another**", 2008(16) SCC 417, to submit that *the guidelines in the Standing Order should be substantially complied with.*

Counsel for the petitioner further submits that the investigation in the present case is complete and challan has been presented. She also submits that even charges have been framed and out of 16 PWs only 04 PWs have been examined and conclusion of the trial is likely to take considerable time and therefore, no fruitful purpose would be served in further detaining the petitioner in jail and thus, he may be enlarged on regular bail.

Per contra, counsel for the State has opposed the grant of

regular bail to the petitioner by stating that the petitioner is also involved in another FIR No.326 of 2020, registered under Section 188, 279, 336, 34 IPC at Police Station City Sonapat, District Sonapat, although he is on bail in the said case. However, she could not dispute the fact that the custody of the petitioner is 01 year, 10 months and 20 days, challan has been presented, charges have been framed and out of 16 PWs only 04 PWs have been examined.

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

From the perusal of the paperbook, it is crystal clear that the sample was taken at the time of seizure on 19.01.2022 and the same was sent to FSL on 27/28.01.2022 i.e. after a delay of about 09 days and the report of FSL was received on 31.10.2022, which is in violation of the Standing Order No.1 of 1988 dated 15.03.1988. For a ready reference, Clause 1.13 of Standing Order No.1/88 is reproduced below:-

“1.13. Mode and Time limit for dispatch of sample to Laboratory: The samples should be sent either by insured post or through special messenger duly authorized for the purpose. Despatch of samples by registered post or ordinary mail should not be resorted to. Samples **must** be dispatched to the Laboratory within **72 hours** of seizure to avoid any legal objection.”

Further, in view of the custody period undergone by the petitioner, it is apposite to refer to a few judgments of the Hon'ble Supreme Court in this regard wherein the Hon'ble Supreme Court has granted the concession of bail solely on ground of long custody :-

Case Nos.	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 Hon’ble Supreme Court also 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.

Accordingly, without commenting anything on merits of the case and in view of the law laid down by the Hon’ble Supreme Court, discussed hereinbefore and considering the fact that the petitioner is in custody for the last 01 year, 10 months and 20 days; the investigation is complete; challan stands presented; out of 16 PWs, only 04 PWs have been examined and the fact that the prosecution has failed to comply with the provisions of Clause 1.13 of the Standing Order No.1/88 (reproduced above) and conclusion of the trial is likely to take some time, this petition is allowed and the petitioner is directed to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

Disposed of accordingly.

(NAMIT KUMAR)
JUDGE

14.12.2023
yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No