

CRM-M-42302-2023 and
CRM-M-50749-2023

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2023:PHHC:143085

238+241

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 07.11.2023

(I) CRM-M-42302-2023

KRISHAN SINGH @ BITTU

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

(II) CRM-M-50749-2023

RAMESHWAR LAL

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. K. B. S. Mann, Advocate
for the petitioner in CRM-M-42302-2023.

Mr. Ankit Bishnoi, Advocate
for the petitioner in CRM-M-50749-2023.

Mr. Harsimar Singh Sitta, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. Both these petitions are taken up together for final disposal with
the consent of learned counsel for the parties since both these petitions arise out

of the same FIR and the prayer in both the cases is for the grant of regular bail to the petitioners.

2. Both these petitions have been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioners in FIR No.160 dated 07.10.2021, under Sections 15 and 29 of the NDPS Act, registered at Police Station Vairoke, District Fazilka, Punjab.

3. Learned counsel appearing on behalf of Rameshwar Lal (petitioner in CRM-M-50749-2023) submitted that the petitioner is in custody from 07.10.2021, which is about 2 years and 26 days and the allegation against the petitioner was that he was driving a car of which he was the owner and other co-accused, namely, Ashok Kumar was sitting with him in the car on the passenger seat and when the said car was intercepted by the Police, there was a recovery of 62 kgs. of *poppy husk*. He further submitted that along with the aforesaid car, there was another car in which some of the other co-accused were travelling, from where there was an alleged recovery of 90 kgs. of *poppy husk*. He further submitted that the other co-accused, namely, Ashok Kumar, who was sitting in the car which the petitioner was driving from where there was an aforesaid alleged recovery, had filed a petition for grant of regular bail before this Court in CRM-M-52217-2023, which was allowed by this Court on 19.10.2023 and the benefit of regular bail has been extended to him. He also submitted that although the petitioner is not exactly at parity with the aforesaid co-accused on the ground that the petitioner was the driver and the owner of the car, whereas, the aforesaid co-accused was the passenger but the petitioner deserves the concession of regular bail on the ground that the aforesaid

co-accused was also granted bail on the ground that there was a prolonged trial and the delay in the trial was not attributable to the accused-petitioners but it was attributed to the prosecution. While referring to the aforesaid, he submitted that the custody of the petitioner is now 2 years and 26 days and the charges in the present case were framed on 25.04.2022, which is more than 1 year and 6 months and only 3 prosecution witnesses have been examined out of which 2 witnesses were the formal witnesses who have deposited the samples in the laboratory and were not a part of the police party and 1 witness was the Investigating Officer. He further submitted that the aforesaid bail petition of aforesaid co-accused, namely, Ashok Kumar was allowed on the ground that there was delay in the trial and while referring to the judgment of Hon'ble Supreme Court in "Satender Kumar Antil versus Central Bureau of Investigation and another", 2022(10) SCC 51, "Mohd. Muslim @ Hussain versus State (NCT of Delhi)", 2023 AIR(SC) 1648, "Dheeraj Kumar Shukla versus The State of Uttar Pradesh", 2023 SCC Online SC 918 and "Rabi Prakash versus The State of Odisha", Special Leave to Appeal (Criminal) No.4169 of 2023, he was granted bail in the light of Article 21 of the Constitution of India and the bar contained under Section 37 was not made applicable in the aforesaid case. He also submitted that the same is the position in the present case pertaining to the present petitioner-Rameshwar Lal because the position with regard to the stage of the trial remains the same as of today as well. He further submitted that none of the persons, who were part of the police party have cared to depose before the Court despite the fact that more than 1 year and 6 months have elapsed after the framing of the charges and no

justification has come forward as to why they are not deposing before the Court. He further submitted that the reason as to why the prosecution witnesses are not deposing before the Court is that the aforesaid *poppy husk* has been implanted upon the petitioner and the petitioner has been been falsely implicated. He also submitted that so far as the present petitioner is concerned, he is not involved in any other case and has clean antecedents as was the case of the aforesaid co-accused, namely, Ashok Kumar and therefore, he may be considered for the grant of regular bail.

4. Learned counsel for Krishan Singh alias Bittu (petitioner in CRM-M-42302-2023) submitted that the petitioner is also in custody from 07.10.2021, which is about 2 years and 26 days and he was travelling in a different car from where there was an alleged recovery of 90 kgs. of *poppy husk*. He further submitted that he was only a passenger in the car and was neither a driver nor the owner of the car and the same reasoning as that of the aforesaid co-accused, namely, Ashok Kumar, who was granted regular bail by this Court as aforesaid will apply to the present petitioner as well because there is no change in the stage of the trial after the aforesaid co-accused was granted bail and so far as the present petitioner is concerned, he is exactly at parity with the aforesaid co-accused, namely, Ashok Kumar. He also submitted that although the petitioner is involved in two more cases under the NDPS Act and two cases under the IPC but in the present case, he has been falsely implicated only because of the reason that earlier he was involved in some cases and the police has falsely implicated the petitioner in the present case.

5. On the other hand, Mr. Harsimar Singh Sitta, DAG, Punjab submitted that so far as the custody of both the petitioners is concerned, the same is correct and both the petitioners are in custody from more than 2 years and it is also correct that the aforesaid co-accused, namely, Ashok Kumar has already been extended the benefit of regular bail by this Court on 19.10.2023 as aforesaid on the ground that there had been delay in the trial and considering the long custody of the petitioner and relying upon the aforesaid judgments of the Hon'ble Supreme Court, he was granted regular bail. He further submitted that however the bar contained under Section 37 of the NDPS Act will apply to both the petitioners as well.

6. I have heard the learned counsel for the parties.

7. Both the petitioners are in custody from 07.10.2021, which is more than 2 years. Petitioner-Rameshwar Lal is stated to be having clean antecedents and not involved in any other case, whereas, petitioner-Krishan Singh alias Bittu is stated to be involved in two more cases under NDPS Act and two cases under the IPC. However, a perusal of the order by which the aforesaid co-accused, namely, Ashok Kumar was granted regular bail by this Court on 19.10.2023 would show that one of the primary reasons for grant of bail was the delayed trial and more than 1 year and 6 months had elapsed and only 3 prosecution witnesses were examined. This Court is of the view that since the stage of the trial is same and the petitioners have suffered incarceration for more than 2 years and the trial of the case is not progressing, both the petitioners would be entitled to grant of regular bail at par with that of the aforesaid co-accused, namely, Ashok Kumar and therefore, the bar contained

under Section 37 of the NDPS Act will not apply to both the petitioners in the light of Article 21 of the Constitution of India as well as in the light of the judgments of the Hon’ble Supreme Court as aforesaid.

8. Consequently, both the petitions are allowed. The petitioners shall be released on regular bail, if not required in any other case, subject to furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

9. However, anything observed hereinabove shall not be treated as an expression of opinion on the merits of the case and is meant for the purpose of deciding the presents petition only.

07.11.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No