

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

209-CRM-M-48923-2021(O&M)

Date of Decision: 30.05.2023

GURWINDER SINGH ALIAS KIKI AND ANOTHER ... Petitioners

VS.

STATE OF PUNJAB

... Respondent

CRM-M-48491-2021 (O&M)

JAI PARKASH

... Petitioner

VS.

STATE OF PUNJAB

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Rakesh Nehra, Senior Advocate with
Mr. Jivesh Malik, Advocate (CRM-M-48923-2021)
Mr. GS Waraich, Advocate (CRM-M-48491-2021)
for the petitioner(s)

Mr. Rajiv Verma, DAG Punjab

Sandeep Moudgil, J. (Oral)

This order shall dispose of the above-cited two criminal misc. petitions which have been filed by the petitioners who are accused in the common FIR. For the sake of order, CRM-M-48923-2021 is being treated as the lead case.

The petitioners seek regular bail in case FIR No.92 dated 05.10.2021 under Sections 22C/29/61/85 of Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Badali Ala Singh, District Fatehgarh Sahib.

Learned senior counsel contends that the petitioners were not arrested at the spot but have been nominated as accused persons, merely on

the basis of disclosure statement made by two co-accused persons, namely, Rajdeep and Gurminder. He also asserts and laid stress on the custody period undergone by the petitioners i.e. 1 year 7 months 20 days as is evident from the custody certificate supplied by the learned State counsel, which is taken on record, a copy of which has been supplied to counsel for the petitioners as well.

Learned senior counsel lastly submits on merits as well that the alleged contraband, in the form of intoxicant tablets, i.e. of Lomotil which are 2700 tablets in No., would not fall in the NDPS Act and rather would be a subject matter under the Drugs and Cosmetic Act.

On the other hand, learned State counsel contends that the case is not covered by the law laid down by a larger Bench of this Court in **Daler Singh vs State of Punjab, 2007(1) RCR (Criminal) 316** inasmuch as the custody period of the petitioner (in both the cases) is just 1 year 7 months and 19 days. Learned State counsel further submits that recovery of contraband has been effected from the possession of the petitioners which is a direct link to the commissioning of the offence on their part and therefore, they do not deserve the concession of regular bail wherein the trial is yet to commence more-so, when there is a serious apprehension of their tampering or damaging the evidence or winning over the witnesses.

Be that as it may, it is an admitted fact that the charges stand framed on 16.04.2022 i.e. almost one year back wherein out of 15, only 2 witnesses have been examined as yet, showing that the trial is moving at a snail's pace. Besides, as per the custody certificate, it is abundantly clear that the petitioners have clean antecedents who are not found involved in any

other case except the present one in which they have been allegedly roped in by way of disclosure statement made by the co-accused when they were in police custody.

In the light of the aforesaid facts and circumstances as discussed above and the orders passed by the Apex Court in Nitish Adhikary @ Bapan vs. State of West Bengal SPL (Crl) No.5769 of 2022 decided on 01.08.2022 and Dheeraj Kumar Shukla vs. State of Uttar Pradesh, SPL (Crl.) No.6690/2022 decided on 25.01.2023, when the petitioners have faced reasonable time behind the bars wherein the trial is likely to take long time and particularly when no useful purpose would be served keeping the petitioners behind the bars and also that they have clear antecedents except the present case which was registered against the petitioners on the basis of disclosure statement made by the co-accused in police custody, the petitioners are directed to be released on regular bail on furnishing bail and surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate concerned.

The present petition is, therefore, allowed.

30.05.2023

V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No