

CRM-M-50171-2021**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRM-M-50171-2021****Date of decision:17.07.2023**

Kulbir Singh alias Bira

...Petitioner

Versus

Union of India

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILLPresent:- Mr. Bhavesh Aggarwal, Advocate,
for the petitioner.Mr. Rajiv Sharma, Advocate,
for the respondent.**HARNARESH SINGH GILL, J. (ORAL)**

1. Through this petition, the petitioner seeks regular bail in NCB Crime No.12/2021 dated 13.02.2021, registered at Narcotic Control Bureau, Amritsar, under Sections 21, 23, 28, 29 and 30 NDPS Act, 1985.

2. Learned counsel for the petitioner contends that the petitioner has falsely been implicated in the present case; that no contraband had been recovered from the petitioner; that the petitioner was arrested in the present case on 28.02.2021 on the basis of his confessional statement that he was present at Indo-Pak Border, when the personnel of Border Security Force had intercepted the Pakistani smugglers with heavy quantity of heroin; that the petitioner had no role to play with the alleged offence, and that there is no other case registered or pending against the petitioner, at least of a similar nature. In support of his contentions, learned counsel relies upon the orders dated 22.08.2022 passed by the Hon'ble Supreme Court in

CRM-M-50171-2021

Special Leave to Appeal (Crl.) Nos.5530-2022, titled as 'Mohammad Salman Hanif Shaikh Vs. State of Gujarat, and dated 04.05.2023, passed by the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No(s). 3221/2023, titled as 'Hasanujjaman & Ors Vs. The State of West Bengal'.

3. On the other hand, learned counsel for the respondent, while opposing the grant of bail to the petitioner, submits that as per the mobile tower locations, the petitioner and one Gurmeet Singh, who is still absconding, were in regular touch with each other as well as the Pakistani smugglers on the intervening night of 12.02.2021/13.02.2021; that recovery of heroin weighing 13.854 kgs. was recovered from a Pakistani smuggler, who had been shot dead on the Indo-Pak Border. However, he does not dispute that no contraband had been recovered from the petitioner. The material witnesses are yet to be examined.

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

5. The petitioner was neither named in the FIR nor was he present at the spot at the time of recovery. Indisputably, no contraband had been recovered from the petitioner. The petitioner has been in custody for the last 02 years and 05 months. Charges are yet to be framed. Trial is unlikely to conclude any time soon. There is no other case registered or pending against the petitioner, at least of a similar nature.

6. The Hon'ble Supreme Court in Hasanujjaman & Ors.(supra), while granting the benefit of bail to the petitioners therein, has held as under:

“2. The allegations are that when the police party intercepted the petitioners along with another person

CRM-M-50171-2021

riding on two motorcycles, they were found in possession of codeine phosphate in a consignment of phensedyl bottles loaded in two nylon bags. During the search, 115 bottles (100 ml. each) of phensedyl were recovered from the joint possession of the petitioners. They were arrested on the spot and have been in custody for more than one year and four months.

3. We have heard learned counsel for the parties and carefully perused the record.

4. The investigation is complete; chargesheet has been filed, though the charges are yet to be framed. The conclusion of trial will, thus, take some reasonable time, regardless of the direction issued by the High Court to conclude the same within one year from the date of framing of charges. The petitioners do not have any criminal antecedents. There is, thus, substantial compliance of Section 37 of the NDPS Act.

5. In such circumstances, but without expressing any views on the merits of the case, we deem it appropriate to release the petitioners on bail subject to the terms and conditions as may be imposed by the Trial Court. 6.

Additionally, it is clarified that in case the petitioners are found involved in any other case under the NDPS Act or other penal law, it shall amount to misuse of the concession of bail granted to them today, and in such a case, necessary consequences shall follow.

7. The petitioners are further directed to appear before the Trial Court regularly. In the event of they being absent, it shall again be taken as a misuse of concession of bail.

8. The Special Leave Petition stands disposed of in the above terms.

9. As a result, pending interlocutory application also stands disposed of.”

CRM-M-50171-2021

7. In view of the above, this Court finds that no useful purpose would be served by keeping the petitioner behind the bars. Resultantly, without commenting anything on the merits, lest it should prejudice the case of either side, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail and surety bonds to the satisfaction of the learned trial Court/Duty Magistrate.

17.07.2023

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No