

CRM-M-300 of 2022 (O&M)

2023:PHHC:058577

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-300 of 2022 (O&M)

Date of decision: 25.04.2023

Darshan Singh

.....Petitioner

versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. S.S. Gill, Advocate, for the petitioner.
Mr. Gaganpreet Kaur, AAG, Haryana.

NAMIT KUMAR, J.

CRM-13268 of 2022

1. This application has been filed by the applicant-petitioner under Section 482 Cr.P.C. for placing on record Annexures P-6 to P-9.

2. Allowed as prayed for. Annexures P-6 to P-9 are taken on record subject to all just exceptions.

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1. This petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case FIR No.27 dated 14.01.2021 under Sections 18 (c) and 25 of NDPS Act, 1985, registered at Police Station Karnal Sadar, District Karnal.

2. Present FIR has been registered on the basis of a secret information received by Inspector Pawan Kumar, when on 14.01.2021, Inspector Pawan Kumar along with ASI Baljit Singh, Constable Satya

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Narain were present at Meerut Chowk, Karnal for investigation of a case bearing FIR No.227/20 under the NDPS Act., to the effect that Darhsan Singh (petitioner) son of Jeet Singh, resident of Luhand Patiala and co-accused Devender Singh alias Vicky son of Daler Singh, resident of Bhuri District Patiala were coming from Shamli to Karnal in a vehicle bearing registration no.PB-11-CJ-3377 Make TATA 4018 along with huge quantity of narcotic substance. Finding the information reliable, notice under section 42 of the NDPS Act was got prepared and the information was sent to SHO, Police Station Sadar, Karnal. Thereafter, raiding party was formed. In the meantime, second raiding party consisting of ASI Purshotam Lal, ASI Anup Singh, HC Naveen Kumar also reached on the spot. Then, Inspector Pawan Kumar disclosed all the facts to the second raiding party. Thereafter, nakabandi was made at Meerut Chowk near Karan Filling Station. After some time, vehicle bearing registration no.PB-11-CJ-3377 Make TATA 4018 was seen coming from the side of Shamli. On seeing the police party, the driver of the said vehicle stopped the vehicle and tried to flee from the spot. However, the driver of the said vehicle was apprehended. Another person, who was sitting on the conductor seat of the vehicle, was also apprehend by the raiding party. On interrogation, the driver of the said vehicle disclosed his name as Darshan Singh son of Jeet Singh, resident of Luhand, District Patiala. On interrogation the person who was sitting on the conductor seat of the vehicle, disclosed his name as Davinder Singh alias Vicky son of Daler Singh, resident of village Bhuri Majra, District Patiala. Notice under Section 50 of the NDPS Act was served upon the accused Devender Singh alias Vicky disclosing therein that he was having right to get his personal search as well as search of vehicle bearing

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registration no. PB-11-CJ-3377 from any Gazeetted officer or from learned Magistrate. After some time, the accused Darshan Singh has filed his reply to the notice stating therein that there is narcotic substance in the vehicle bearing registration no. PB-11-CJ-3377, which is owned by himself and Darshan Singh and he wanted to get the search of his vehicle from some Gazetted Officer. Thereafter, Inspector Pawan Kumar took the search of the vehicle bearing registration no. PB-11-CJ3377 and on checking of the cabin of the vehicle, 30 packets containing opium were found. Then, the recovered Opium was weighed along with packets with the help of electronic weighing scale and it came to be 30 Kgs 340 grams of Opium. On asking, both the accused could not produce any permit or licence for keeping Opium. Thereafter, petitioner- Darshan Singh (accused) and Devinder Singh alias Vicky (co-accused) were arrested and Section 25 of NDPS Act was added in this case. During further investigation, the accused persons have made disclosure statements separately implicating the co-accused namely Shyam Lal son of Mool Chand and Bajrang Lal son of Khiw Raj, who are yet to be arrested in this case.

3. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the present case, as he has been made scapegoat by the police and has only been planted in the alleged recovery as an accused and there is gross violation of the provisions of Section 50 of the NDPS, Act, which mandates for a personal search in the presence of a Magistrate or Gazetted Officer, however, the General Manager Roadways / Duty Magistrate has not introduced himself to the petitioner – accused, as he directed the Investigatig Officer present at the spot to conduct the search of the accused and vehicle. He further submits

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that in violation of the procedure sample was taken from only two bags. Learned counsel places reliance on the order of a Co-ordinate Bench of this Court in ***CRM-M-32287 of 2021 – Poonam Devi Rao v. State of Punjab passed on 31.08.2022***. He further submits that petitioner is in custody since 14.01.2021. Learned counsel further submits that investigation in the present case is complete; challan has been presented; charges have been framed and out of total 18 prosecution witnesses only three witnesses have been examined till date and the case is now fixed for prosecution evidence on 03.05.2023. Trial may take a considerable time to conclude. Therefore, no fruitful purpose would be served by detaining the petitioner behind bars.

4. *Per contra*, learned State counsel while placing on record status report dated 24.04.2023 as well as custody certificate has opposed the prayer for grant of regular bail to the petitioner by submitting that huge quantity of opium was recovered from the petitioner, which falls under the category of ‘commercial quantity’. However, she could not refute that investigation in the present case is complete; challan has been presented; charges have been framed; out of total 18 prosecution witnesses three prosecution witnesses have been examined and now the case is fixed for prosecution evidence on 03.05.2023.

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

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

Case Number	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.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

7. Keeping in view the custody of the petitioner, which is 02 years 02 months and 28 days; investigation is complete; challan has been presented; charges have been framed and out of 18 prosecution witnesses, only three prosecution witnesses have been examined and trial is likely to take a considerable time, however, without commenting upon the merits of the case, the petitioner is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court. However, in addition to conditions that may be imposed by the trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions: -

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- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence similar to the one alleged in the present case.
- (v) The petitioner shall deposit his passport, if any with the trial Court.
- (vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.
- (vii) The petitioner shall not in any manner try to delay the trial.

8. In case of breach of any of the aforesaid conditions and those which may be imposed by the trial Court, the prosecution shall be at liberty to move an application for cancellation of bail of the petitioner.

9. The petition stands disposed of accordingly.

25.04.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No