

205.

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

CRM-M-58527-2022

Date of Decision: 04.01.2023

AJAY KUMAR @ KAKU

.... Petitioner

Versus

STATE OF PUNJAB

.... Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. D.N. Ganeriwala, Advocate and
Mr. Ananya Bhardwaj, Advocate,
for the petitioner.

Mr. Sehajbir Singh Aulakh, AAG, Punjab.

JAISHREE THAKUR.J (Oral)

This is 4th petition that has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.22, dated 30.01.2020, under Sections 21 and 29 of the NDPS Act, 1985, registered at Police Station Special Task Force, District STF Wing, Phase-IV, Mohali (SAS Nagar).

Learned counsel appearing on behalf of the petitioner would inter alia contend that the petitioner has been falsely implicated in the said matter as would be evident from the fact that two main accused who were apprehended on 30.01.2020, sought to nominate the petitioner after a lapse of almost 6 months. It is only on the basis of disclosure statement of Kewal Krishan and Harjit Singh that the petitioner came to be nominated as an accused. The petitioner was apprehended on 19.06.2020, the date of the alleged disclosure statement and there was no recovery effected from him on

his personal search, but recovery of 352 grams of heroin was allegedly effected from his house.

Counsel appearing on behalf of the petitioner would contend that no credence can be given to a statement of a co-accused while in custody. He would argue that the petitioner has been in custody since 19.06.2020 and as on date, there is no progress in the trial. It is argued that 23 witnesses have been cited, but no evidence has been recorded and, therefore by taking into account mere length of his custody, he ought to be allowed regular bail. He would rely upon judgments of the Supreme Court and Coordinate Benches of this Court wherein regular bail has been allowed keeping in view the length of custody of a person accused under the NDPS Act and, therefore, would seek similar relief (see: *Nitish Adhikary @ Bapan Versus State of West Bengal, Special Leave to Appeal (Crl.) No.5769 of 2022, dated 01.08.2022; Shariful Islam @ Sarif Versus State of West Bengal, Special Leave to Appeal (Crl.) No.4173 of 2022, decided on 04.08.2022; Mohammad Salman Hanif Shaikh versus State of Gujarat, Special Leave to Appeal (Crl.) No.5530 of 2022, decided on 22.08.2022; Chitta Biswas alias Subhas Versus State of West Bengal, Criminal Appeal No.245 of 2020, decided on 07.02.2020 and Prem Singh Versus State of Haryana, CRM-M-18142-2021, decided on 10.06.2021; Sunita Devi @ Sunita Versus State of Punjab, decided on 19.03.2021).*

On the other hand, counsel appearing on behalf of respondent-State would oppose the grant of regular bail to the petitioner by contending that the petitioner has been in custody on the basis of recovery of 352 grams

of heroin from his house apart from the fact that he was nominated as an accused by his accomplices.

Keeping in view the custody period of the petitioner and the fact that trial will take time to conclude as out of 23 witnesses cited, no witness has been examined so far and further having regard to the judgments cited above, this Court deems it appropriate to grant regular bail to the petitioner.

Accordingly, the instant petition is allowed and the petitioner is directed to be released on regular bail on his execution of personal bond in the sum of Rs.5 lakhs with one surety in the like amount to the satisfaction of concerned trial Court/Duty Magistrate

The observations made hereinabove shall not be construed as an expression on the merits of the case and the trial court shall decide the case on the basis of available material.

(JAISHREE THAKUR)
JUDGE

04.01.2023

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No