

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

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**CRM-M-60483-2022**  
**Date of decision: 28.02.2023**

HARJOT SINGH @ JOT

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

**CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ**

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Present:- Mr. Kanwaljit Singh, Advocate  
for the petitioner.

Ms. Niharika Sharma, AAG, Punjab.

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**VINOD S. BHARDWAJ, J. (Oral)**

This is a second petition filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case bearing FIR No. 59 dated 27.04.2020 registered under Section 18 of the Narcotics Drugs and Psychotropic Substances Act, 1985 at Police Station Samrala, District Khanna, Ludhiana.

2. As per the case of the prosecution, the secret information was received by the Investigating Agency that Harjot Singh @ Jot (petitioner herein) was coming on Splendor motorcycle from village Takhtan to Nilow. It was informed that after barracading, they may be apprehended with huge quantity of opium. Finding the information to be reliable, a ruka was sent to the Police Station for registration of the case. Thereafter, a barricading was done and the motorcycle bearing registration No. PB-10-FZ-4873 was stopped. The aforesaid Motorcycle was being driven by Harjot Singh @ Jot i.e. the petitioner herein and the person sitting on the pillion was Jatinder Singh son of Labber

Singh. An offer was put to the petitioner expressing apprehension that he was carrying narcotics substance in the plastic packet held by him. The accused put their signatures on the aforesaid offer. Thereafter, the Gazetted Officer namely the Deputy Superintendent of Police, Samrala came at the spot and he was briefed about the circumstances. Efforts were made by the Deputy Superintendent of Police to associate private witnesses, however, no one express their willingness. The Deputy Superintendent of Police discloses his identity and put in action to the witnesses about search. The accused exercised their option to be searched in the presence of the Gazetted Officer. Accordingly, their consent was recorded on the aforesaid memo. A plastic bag carried by the accused was searched in which 03 kilogram opium was recovered. The same was duly sealed by the concerned officials in accordance with the provisions of the NDPS Act and the rules prepared thereunder.

During the investigation, disclosure statement of accused Harjot Singh and Jatinder Singh were recorded in which they confessed to have brought 18 kg of opium from Rajasthan. 03 Kilograms had already been recovered from him whereas 01 kg of the abovesaid opium had been segregated to be sold to one Balkar Singh and the remaining 14 kilogram of opium was lying at the house of Harjot Singh which he could recover. Their disclosure statements were recorded and pursuant to the abovesaid disclosure, 01 kilogram of opium was recovered and the remaining 14 kilogram of opium was recovered at the disclosure of Harjot Singh from a box bed lying in his house and put in 03 different plastic packets. Final report upon conclusion of investigation was filed before the competent Court wherein charges have been framed.

3. Counsel appearing on behalf of the petitioner contends that the petitioner has already been in custody for 02 years and 10 months and that this Court had directed the prosecution to conclude its evidence expeditiously and preferably within a period of 05 months vide order dated 13.07.2022. However, the needful has not been done and only 08 witnesses of the total 16 witnesses cited by the prosecution have been examined so far. He contends that there is only one other case against the petitioner wherein recovery of 10 grams of heroin was effected from the co-accused of the petitioner. He further contends that, the co-accused of the petitioner has already been enlarged on bail. It is averred that the petitioner has undergone an actual custody of 02 years and 10 months and that his precious rights under Article 21 of the Constitution of India are being violated as a result of the trial not being concluded in an expeditious manner and the prosecution having failed to examine its evidence.

4. Per contra, learned counsel appearing on behalf of respondent-State has opposed the grant of bail to the petitioner on the ground that huge quantity of contraband has been recovered from conscious possession of the petitioner. 14 kilogram of opium was recovered at the disclosure of the petitioner and there is no allegation of any malice, mischief or foul play against the Investigating Agency. The procedure as prescribed under the NDPS Act and rules framed thereunder has been meticulously followed. She further contends that the petitioner has criminal antecedents and that he has now taken recourse to indulging himself in the trade of narcotic which is currently infesting society in the State. She further submits that there was no such

direction issued by the Court to the prosecution to conclude the prosecution evidence and that the same was a statement made by the prosecution to make every effort to conclude the evidence in a time bound manner. A reference is made to the various zimni orders passed by the Additional Sessions Judge, Ludhiana which shows that the trial Court has taken coercive steps to secure presence of the witnesses and the proceedings before the trial Court are not being adjourned unnecessarily. She further refers to zimni orders dated 05.01.2023 to substantiate that the cross examination of the prosecution witness had to be deferred as the Court time was over. The matter was being adjourned on short dates for recording of the prosecution evidence. It is thus contended that there has been no inexplicable delay on the part of the prosecution to conclude its evidence. It is further submitted by the State counsel that Article 21 *ipso facto* does mandate expeditious conclusion of trial, however, mere delay does not create any rights in favour of an accused. The said aspect can be duly balanced by issuing appropriate directions especially when the allegations against the petitioner are heinous and huge recovery has been effected. Further, the delay in conclusion of the evidence cannot be attributed to lack of action of the authorities concerned. The matter was being kept for short dates to conclude the trial and as such, the trial Court is making every endeavour to expedite the evidence. She further contends that 08 out of total 16 witnesses already stands examined in which 06 witnesses have been examined 02 have been given up and that appropriate direction can be issued to the prosecution to conclude the evidence in a time bound manner.

5. I have heard learned counsel appearing on behalf of the parties and have gone through the documents appended alongwith the present petition.

6. There is no dispute to the preposition of the law that Article 21 of the Constitution of India does necessitate in expeditious adjudication of criminal proceedings for protection of rights of an individual to speedy trial, however, the same does not ipso facto confer an indefectible right on accused to claim bail in the event of failure thereof. It always lies in the discretion of the Court concerned to examine the totality of the circumstances, the gravity of offence, the participation, the recovery, the manner in which the offence is being committed, and the criminal antecedents. Merely because the co-accused has been granted concession of bail does not mean that the other co-accused also ought to be granted the concession of bail especially when the principles of parity are not applicable . Huge quantity has been recovered from the petitioner whereas only 01 kg of contraband has been recovered at the disclosure of the said co-accused. Hence, both the accused cannot be said to be identically placed.

7. Resultantly, the Court may strike a balance in order to protect the right of an accused under Article 21 and ensure that the trial is concluded expeditiously. It has been pointed out that the matter is fixed for 20.03.2023 for recording of prosecution witnesses, even though a statement had been made by the prosecution to make every endeavour to conclude the examination of prosecution witnesses within a period of 05 months, however, the same could not be obtained. Resultantly, in order to balance the equities, the trial Court has directed

to conclude the prosecution evidence within a period of 02 months from the date next fixed before the trial Court for recording of the prosecution witnesses. All the said witnesses shall be summoned by the trial Court.

8. A copy of this order shall also be sent to the Superintendent of Police. Salaries of the official witnesses to whom the summons are served and who failed to appear before the trial Court on the date for which their appearances is required shall not be released till such time that they depose or accept with the leave of this Court

The present petition is dismissed with direction as aforesaid.

(VINOD S. BHARDWAJ)  
JUDGE

FEBRUARY 28, 2023

*Vishal sharma*

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