

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-61021-2022 (O&M)

Date of Decision: 29.05.2023

SAHIL KUMAR @ GORA

... Petitioner

Versus

STATE OF PUNJAB

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. SK Passi, Advocate
for the petitioner.

Ms. Akshita Chauha, DAG Punjab.

HARNARESH SINGH GILL, J.(Oral)

Prayer in this 3rd petition is for grant of regular bail to the petitioner in case bearing FIR No.243 dated 08.11.2020, registered under Section 22 of the NDPS Act and Section 29 of the NDPS Act (added later on), at Police Station City Kotkapura, District Faridkot, (the first bail petition was dismissed on merits vide order dated 19.01.2022 and the second was dismissed as withdrawn vide order dated 26.05.2022).

Status report by way of an affidavit dated 18.05.2023 of the Deputy Superintendent of Police, Sub-Division Kotkapura, District Faridkot, filed on behalf of the respondent-State, in the Court, is taken on record.

Learned counsel for the petitioner submits that the petitioner was neither named in the FIR nor any recovery was effected from him; that the petitioner was indicted on the basis of the disclosure statement of the co-accused; that the alleged recovery was effected from co-accused,

namely, Satyam Kumar; that the petitioner has been in custody since 08.11.2020; that out of 15 prosecution witnesses, only 10 have been examined so far and that out of two other FIRs under the NDPS Act, in FIR No.244 dated 09.11.2020, the petitioner is on bail and in FIR No.137 dated 25.12.2019, the petitioner has been acquitted on 07.09.2022.

In support of his contentions, learned counsel for the petitioner relies upon the order dated 15.03.2023 passed by the Hon'ble Apex Court in Special Leave to Appeal (Crl.) No.1166/2023 titled as Chet Ram @ Ram Veer vs Union of India, respectively.

Per contra, while opposing the prayer for grant of regular bail to the petitioner, learned State counsel does not dispute the custody period of the petitioner. She, however, submits that the recovery effected in the present case falls under the commercial quantity and that Section 37 NDPS Act bars the grant of bail to the accused in the case of commercial quantity. She further submits that the petitioner is a habitual offender, inasmuch as, another FIR of similar nature is pending against him and that most of the prosecution witnesses are yet to be examined.

I have heard the learned counsel for the parties.

Though the recovery allegedly effected in the present case falls under the commercial quantity, yet the fact remains that the petitioner has been in custody since 08.11.2020. Neither any recovery was effected from the petitioner nor he was named in the FIR. The petitioner was indicted on the disclosure statement of the co-accused.

As per the learned counsel for the petitioner, in another pending NDPS case, the petitioner is on bail and in one NDPS case, the petitioner stands acquitted. Some of the prosecution witnesses are yet to be examined. In such circumstances, trial of the case would take a long time to conclude. Therefore, no useful purpose would be served by keeping the petitioner behind the bars.

The Hon'ble Apex Court in Chet Ram @ Ram Veer's case (supra) has held as under:-

'Apparently the petitioner was acquitted in the case where he was charged with committing the offence under Section 307 IPC. As far as the other FIR alleging offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 is concerned, he has been enlarged on bail.

Considering the circumstances especially that he has undergone detention for 3 and a half years and the conclusion of trial is most likely in the distant future, he is enlarged on bail subject to such conditions as the trial court deems appropriate to impose on him.

Special leave petition is allowed in the above terms.

Pending application(s), if any, are disposed of.

In view of the above and without commenting anything on the merits of the case, 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/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate/Chief Judicial Magistrate concerned.

29.05.2023

Aman Jain

(HARNARESH SINGH GILL)

JUDGE

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No