

2024:PHHC:052856

203-2

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-1310-2024 (O&M)
Date of Decision: 19.04.2024

Didar Singh @ Kaddu

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Ruhani Chadha, Advocate
for the petitioner.

Mr. Sartaj Singh Gill, Senior DAG, Punjab.

HARSH BUNGER J. (ORAL)

CRM-14464-2024:

Prayer in the present application is for placing on record copies of zimni orders passed by the learned Special Judge, Kapurthala as Annexure P-8.

For the reasons mentioned in the application, copies of zimni orders (Annexure P-8) passed by the learned Special Judge, Kapurthala are taken on record, subject to all just exception.

Application is accordingly disposed of.

CRM-M-1310-2024:

1. This is second petition filed under Section 439 of the Code of Criminal Procedure on behalf of petitioner (Didar Singh @ Kaddu) for grant of regular bail in case bearing FIR No.295 dated 13.11.2021 (Annexure P-1) under Sections 15(C) and 29 of the Narcotic Drugs

and Psychotropic Substances Act, 1985 (in short 'the N.D.P.S. Act') (offence under Section 25 of the N.D.P.S. Act added later on), registered at Police Station Sultanpur Lodhi, District Kapurthala.

2. The first petition (CRM-M-46018-2022) was dismissed as withdrawn vide order dated 12.12.2022.

3. Custody certificate dated 18.04.2024 of the petitioner is filed by learned State counsel in Court today, which is taken on record, subject to all just exceptions.

4. Briefly, the aforestated case FIR (Annexure P-1) was registered on the basis of *ruqa*, wherein it was stated that on 13.11.2021, Sub Inspector Harjeet Singh along with the police party was going from Police Station to Village Totti to Village Rampur Jagir, there they met Inspector Surjit Singh I/C, C.I.A. Staff, Kapurthala with police party, in connection with patrolling duty and search of bad elements. When they reached half kilometer ahead of Village Sherpur Dona, they noticed that one Innova car (light golden colour) was parked on the path and there was a *katcha rasta* on left hand side going towards fields, where a truck was also parked; in front of which, six persons were filling the sacks; and upon seeing the police party, four of the said persons fled away from the spot in their Innova car, whom Sub Inspector Harjeet Singh and Assistant Sub Inspector Gurdeep Singh already knew by their names, as Gurdit Singh @ Gittu son of Gurdeep Singh, his brother Tikka Singh son of Gurdeep Singh, Didar Singh @ Kaddu (petitioner) son of Darbara Singh and Parmatma Singh @ Bhola son of Jagir Singh, all residents of Village Sench, Police Station Sultanpur Lodhi. The said Innova car was chased by Inspector Surjit Singh and police party; and in the meanwhile, the remaining two persons also tried to flee

police party. Upon enquiry, the person driving the truck disclosed his name as Gurcharan Singh son of Sukhdev Singh resident of New Chandan Nagar Kartarpur, Police Station Kartarpur, District Jalandhar and the person apprehended from the cleaner side disclosed his name as Sandeep Singh son of Bhajan Singh resident of Bhagiwala, Police Station Mehtapur, District Jalandhar.

5. Thereafter, by following the due procedure, the search of truck was conducted, whereupon eighteen bags containing *poppy husk* were recovered, which on weighing came to be 15 kilograms in each bag (in total 270 kilograms). The recovered contraband was converted into parcel and sealed and was taken into police possession.

6. Learned counsel for the petitioner submits that the petitioner is innocent and he has been falsely implicated in the present case. It is submitted that the petitioner was not arrested at the spot. It is further submitted that petitioner has been roped in this case only on the statement of Assistant Sub Inspector Gurdeep Singh, who is inimical towards petitioner and other three persons (Gurdit Singh @ Gittu, Tikka Singh and Parmatma Singh @ Bhola). Learned counsel for the petitioner contends that the alleged recovery has been effected from the truck; and neither any recovery has been effected from petitioner nor he has any connection with the alleged recovery or the truck in question.

7. Learned counsel for the petitioner very fairly submits that the petitioner is involved in one more case (FIR No.127 dated 27.12.2021) under the N.D.P.S. Act; however, he has already been granted the concession of regular bail in the said case by a co-ordinate Bench of this Court vide order dated 12.09.2023 passed in CRM-M-48517-2022. A copy of the order

is also handed over by learned counsel for the petitioner in Court today,

which is taken on record, subject to all just exceptions.

Learned counsel for the petitioner submits that the petitioner has undergone actual custody in the instant case for a period of two years, one month and five days (as on 18.04.2024); investigation in the case is complete, challan stands presented and charges have been framed on 28.08.2023, however on account of arrest of co-accused Gurdit Singh and filing of supplementary challan, learned trial Court vide order dated 18.10.2023 observed that charge is required to be re-framed; hence, the conclusion of trial is likely to take some time and no useful purpose would be served by keeping the petitioner behind the bars. Learned counsel for the petitioner contends that the bail application under Section 439 of the Code of Criminal Procedure, filed on behalf of the petitioner before the Court of learned Judge Special Court, Kapurthala has been wrongly declined vide order dated 16.05.2022 (Annexure P-6). Learned counsel for the petitioner submits that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court. Learned counsel further submits that the petitioner is also willing to furnish security in the form of Fixed Deposit Receipt (F.D.R.) before the concerned Court, so as to ensure his presence before the Court on each and every date of hearing. Accordingly, prayer for grant of regular bail is made.

8. Per contra, learned State counsel opposes the prayer of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence. It is submitted that the recovered contraband in the instant case falls under the category of 'commercial quantity' and thus, rigors of Section 37 of the N.D.P.S. Act are attracted in this case. While referring to the custody certificate, learned State counsel has submitted that besides

(FIR No.127 dated 27.12.2021), however, he is on bail in the same. Learned State counsel further states that there is an apprehension that in the event of grant of bail, the petitioner may influence the witnesses or may even abscond to delay the trial. Accordingly, prayer has been made for dismissal of the present petition.

However, learned State counsel has not disputed that the petitioner was not arrested at the spot; and while referring to the custody certificate, it is conceded that petitioner has undergone actual custody in the instant case for a period of two years, one month and five days (as on 18.04.2024). It is also conceded by learned State counsel that investigation in the case is complete, challan stands already presented and as per order dated 18.10.2023, charges are to be re-framed.

9. Learned counsel for the petitioner, in rebuttal, has relied upon the judgment of Hon'ble Supreme Court in ***Maulana Mohd. Amir Rashadi v. State of U.P. and another, 2012(2) SCC 382*** to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. The relevant portion of the said judgment is reproduced herein below :-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

10. I have heard learned counsel for the parties and perused the paper book as well as custody certificate of the petitioner.

In the instant case, the petitioner was not arrested at the spot but

was apprehended subsequently. Petitioner has undergone actual custody in the instant case for a period of two years, one month and five days (as on 18.04.2024). The ingredients of the offence alleged against the petitioner are yet to be proved before the trial Court by prosecution. Investigation in the case is complete, challan stands presented before the trial Court and although initially charges were framed, however as per order dated 18.10.2023, on account of arrest of co-accused Gurdit Singh and filing of supplementary challan, charges are to be re-framed. Therefore, this Court has reason to believe that the trial in this case is likely to take some time to conclude.

12. Hon'ble the Supreme Court in the case of ***“Dheeraj Kumar Shukla Versus The State of Uttar Pradesh”***, ***SLP (Criminal) No. 6690/2022*** decided on 25.01.2023 observed that in case of long custody period, involving quantity recovered to be of commercial nature, where the trial is yet to commence, though charges had been framed, the condition of Section 37 of NDPS Act can be dispensed with. In the case of ***“Bhupender Singh Versus Narcotic Control Bureau” (2022) 2 RCR (Crl.) 706***, the Division Bench of this Court observed with regard to achieving balance between right to speedy trial guaranteed under Article 21 of the Constitution of India and rigors of Section 37 of NDPS Act. Similarly, in the case of ***“Shariful Islam alias Sarif Versus The State of West Bengal” SLP (Crl.) No. 4173/2022***, decided on 04.08.2022, Hon'ble the Supreme Court granted bail to the petitioner in a case of recovery of commercial quantity of contraband, considering incarceration for over 1 year and 6 months and there being no likelihood of completion of trial in the near future.

13. Hon'ble Apex Court in case titled ***“Dataram Singh v. State of Uttar Pradesh & Anr.”***, ***2018(2) RCR (Criminal) 131***, has held that

freedom of an individual cannot be curtailed for indefinite period, especially when his/her guilt is yet to be proved. It has been further held by the Hon'ble Apex Court in the aforesaid judgement that a person is believed to be innocent until found guilty.

14. Hon'ble Apex Court in case titled *“Umarmia Alias Mamumia v. State of Gujarat”*, (2017) 2 SCC 731, has held delay in criminal trial to be in violation of right guaranteed to an accused under Article 21 of the Constitution of India.

15. In *“Manoranjana Singh alias Gupta v. CBI”*, (2017) 5 SCC 218, Hon'ble Apex Court has held that the object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial.

Pertinently, appropriate directions can be issued for securing the attendance of the petitioner during the trial.

16. Therefore, as regards the apprehension expressed by learned State counsel that the petitioner may influence the witnesses or may even abscond in order to delay the trial, it is observed that in the event of any such conduct, the prosecution can always approach the competent Court for cancellation of bail. Accordingly, the State/Prosecuting Agency/State police shall be at liberty to observe the behaviour of the petitioner during the bail period, and in case it feels that the petitioner is indulging in influencing any of the witnesses or tampering with the prosecution evidence in any manner or otherwise causing interference with the progress of trial, it shall be open for the State/Prosecuting Agency/State police to move to the trial Court for cancellation of the bail, which shall be decided by the trial Court on merits.

Maulana's case (supra), the present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds with two local sureties to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate concerned. However, the concerned Station House Officer shall be informed about the release of petitioner and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of case/trial and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer. He would also furnish his undertaking to the effect that he will not indulge in any illegal activity. The petitioner shall also appear before the concerned Police Station/Station House Officer on first Monday of every month till the conclusion of trial.

18. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs.1,00,000/- and submit the same with the trial Court. The same would be liable to be forfeited as per law, in case the petitioner remains absent from trial without any sufficient cause.

19. Nothing expressed hereinabove shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

20. The petition is accordingly disposed of.

21. All pending application(s), if any, shall also stand closed.

19.04.2024

Apurva

(HARSH BUNGER)
JUDGE