

CRM-M-5424-2023
CRM-M-56803-2023

1
2024:PHHC:012924
2024:PHHC:012925

218+237
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 31.01.2024

CRM-M-5424-2023
Baljit SinghPetitioner
Versus

State of PunjabRespondent

CRM-M-56803-2023
Gobind SinghPetitioner
Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Satnam Singh Gill, Advocate
for the petitioners.
Mr. Iqbal S. Mann, DAG, Punjab.

PANKAJ JAIN, J. (ORAL)

Petitioners herein pray for grant of regular bail during pending trial in case F.I.R. No.334 dated 28th of August, 2019 registered for the offences punishable under Sections 21, 22, 25 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985, Section 25 of Arms Act, 1959 and Section 473 of the Indian Penal Code, 1860 at Police Station City Barnala, District Barnala.

2. As per the case of the prosecution, the petitioner(s) along

with two other co-accused were apprehended while in possession of 1.00 lac tablets of 'Tramadol Hydrochloride'. As per the custody certificate the petitioner Baljit Singh @ Mota has by now undergone actual custody of more than 4 years, 5 months and 1 day. Petitioner Gobind Singh is in custody since 28th August, 2019.

3. Counsel for the petitioners submits that dehors the merits of the case keeping in view the delayed trial and the custody of the petitioners they will be entitled for bail during pendency of trial.

4. Per contra, State Counsel informs the Court that out of 32 cited witnesses, 9 stand examined. 8 of them have been given up by the prosecution and 15 witnesses, most of whom are official are yet to be examined. He submits that it is not a case wherein prosecution can be said to be inert as the trial has proceeded considerably and keeping in view the huge quantity of contraband recovered from the petitioners, there is no case for grant of bail.

5. I have heard rival contentions of counsels representing the parties and have gone through records of the case.

6. So far as the statute is concerned, Section 36 of the NDPS Act recognizes the right of the accused to speedy trial. The debate w.r.t. rigors as contained under Section 37 of the NDPS Act and right

of the under-trials to speedy trial having its roots in Article 21 of the Constitution of India was first addressed by the Supreme Court in the case of '**Supreme Court Legal Aid Committee representing Undertrial Prisoners vs. Union of India**', (1994) 6 SCC 731.

7. There can't be any dispute with the legal proposition canvassed therein. However, the issue is: “*Whether prolonged custody can be held to be the stand alone criterion for grant of bail under in NDPS cases ?*”

8. The precise issue was considered by the Division Bench of this Court in '**Daler Singh vs. State of Punjab**', 2007(1) R.C.R. (Criminal) 316. While issuing guidelines to deal with grant of bail to the convicts under the NDPS Act, it was held as under :

“29. We, therefore, feel that keeping in view the spirit of Article 21, the following principles should be adopted for the release of the prisoners (convicts) on bail after placing them in different categories as under :-

(i) Where the convict is sentenced for more than ten years for having in his conscious possession commercial quantity of contraband, he shall be entitled to bail if he has already undergone a total sentence of six years, which must include atleast fifteen months after conviction.

(ii) Where the convict is sentenced for ten years for having in his conscious possession commercial quantity of the contraband, he shall be entitled to bail

if he has already undergone a total sentence of four years, which must include atleast fifteen months after conviction.

(iii) Where the convict is sentenced for ten years for having in his conscious possession, merely marginally more than non-commercial quantity, as classified in the table, he shall be entitled to bail if he has already undergone a total sentence of three years, which must include atleast twelve months after conviction

(iv) The convict who, according to the allegations, is not arrested at the spot and booked subsequently during the investigation of the case' but his case is not covered by the offences punishable under section 25, 27-A and 29 of the Act, for which in any case the aforesaid clauses No. (i) to (iii) shall apply as the case may be, he shall be entitled to bail if he has already undergone a total sentence of two years, which must include atleast twelve months after conviction.

30. In our view, no bail should be granted to a proclaimed offender, absconder or the accused repeating the offence under the Act. Similarly a foreign national who has been indicted under the Act and other traffickers who stand convicted for having in their possession extra ordinary heavy quantity of contraband (like heroine, brown-sugar, charas etc.) shall not be entitled to the concession of bail as extending the said concession to such like convicts, in our view, would certainly be against the very spirit of the 'Act'."

9. In light of the above, this Court finds that prolonged custody of an accused in delayed trial is definitely one of the primary

considerations while considering bail plea but the same cannot be the solitary consideration. The Courts while considering the bail plea of under-trials under the NDPS Act have to be alive to certain mitigating circumstances, which for the purpose of illustration are enlisted as under :

- (a) Whether petitioner has remained a Proclaimed Offender, absconder;
- (b) Repeated offender under the Act cannot claim bail merely for prolonged custody. In light of provision contained under Section 37 prior/ subsequent offence committed by the accused under NDPS Act cannot be ignored;
- (c) Extraordinarily heavy quantity of contraband recovered from the possession of the applicant serves as a ground for denial of bail;
- (d) Nature of evidence against the applicant has to be considered i.e. an applicant who is allegedly found to be in conscious possession of the contraband cannot be treated at par with the person who has been nominated on the basis of disclosure statement made by co-accused in custody; and
- (e) While considering the question of delay, the Court has to see the stage and cause of delay in trial. Where accused(s) is himself responsible for delay in trial, he cannot be allowed to claim bail enforcing his right to speedy trial.

10. In view of above, keeping in view the fact that it is not a case where the trial has not at all proceeded, instead is in the midst and considering the extraordinarily huge quantity alleged to have been recovered from the petitioners, this Court does not find it to be a case for grant of bail. Having said so, in the interest of justice, the Trial Court is directed to expedite the trial and to conclude the same expeditiously, preferably within a period of three months. The Trial Court shall draw schedule for examination of the witnesses. The prosecution is directed to make sure that the same is adhered to and the witnesses appear on the scheduled dates for their examination.
11. With the aforesaid directions, the present petitions are disposed off with liberty to the petitioners to move an appropriate application seeking release on bail, in case the trial is delayed further.
12. A copy of this order be kept on the file of other connected case.

January 31, 2024
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes