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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M No.9762 of 2024 (O&M)
Date of decision: 22.07.2024

Lakhwinder Singh @ Lakhi

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Vipin Kumar Sharma, Advocate
for the petitioner.

Mr. Surya Kumar, AAG, Punjab.

NAMIT KUMAR J. (Oral)

1. In compliance of order dated 26.04.2024, short reply by way of affidavit of Sumit Sood, Deputy Superintendent of Police, Sub-Division Adampur, District Jalandhar (Rural) along with custody certificate dated 21.07.2024, has been filed in the Court today on behalf of respondent-State, which are taken on record.
2. Prayer in this 3rd petition filed under Section 439 Cr.P.C., is for grant of regular bail to the petitioner in FIR No.59 dated 12.08.2021, registered under Sections 15(C) of the NDPS Act (Section 27 of the NDPS Act, added later on) at Police Station Patara, Jalandhar, District Jalandhar.
3. As per prosecution case, the allegations levelled in the FIR are that on 12.08.2021 SI Pankaj Kumar alongwith other police officials was patrolling and present at Narangpur Chowk and there he received a

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secret information that Lakhwinder Singh (petitioner herein) is indulged in large scale smuggling of poppy husk and he is using one Alto car bearing registration No.PB-08-BC-8190 for smuggling the same. The secret informer further informed him that Lakhwinder Singh is coming on his Alto car via Isharwal, Nauli towards Narangpur Khichipur and if a naka is laid down, then he can be apprehended with large quantity of Poppy Husk. Thereafter, a naka was laid down and the accused was apprehended and 100 Kgs of Poppy Husk was recovered from him and during interrogation, he also suffered a confessional statement and got recovered another 20 Kgs of Poppy Husk. On these allegations, the present FIR was registered.

4. Learned counsel for the petitioner *inter alia* contends that despite the direction issued by this Court to conclude the trial expeditiously without granting unnecessary and unwarranted adjournments, vide order dated 11.09.2023, passed in CRM-M No.25310 of 2023, the trial has not been concluded so far. He submits that the petitioner is innocent and has been falsely implicated in the present case. He further submits that the petitioner is in custody for the last 02 years 11 months and 02 days.

5. Learned counsel for the petitioner further submits that the investigation in the present case is complete as challan stands presented on 22.12.2021; charges have been framed and out of total 13 prosecution witnesses, only 06 PWs have been examined so far and the trial is likely to take considerable time to conclude and, therefore, no

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fruitful purpose would be served by detaining the petitioner behind the bars.

6. Learned counsel for the petitioner has referred to a judgment of the Hon'ble Supreme Court passed in ***"Satender Kumar Antil Vs. Central Bureau of Investigation and another"***, 2022(10) SCC 51, to contend that the Hon'ble Supreme Court has discussed the serious issue with regard to repeated adjournments and its effect upon the Right to Life under Article 21 of the Constitution of India. He has also referred to a latest judgment of the Hon'ble Supreme Court passed in ***"Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)"***, 2023 AIR (Supreme Court) 1648 to contend that when there is a long delay in the trial and especially when it is not the fault of the accused and in that situation even the effect of Section 37 of the NDPS Act will be diluted in the given facts and circumstances of each and every case.

7. Per contra, learned State counsel has opposed the prayer for grant of regular bail to the petitioner on the ground that the petitioner is a habitual offender and apart from the present FIR, he is involved in two more cases i.e. FIR No.16 dated 25.02.2017 registered under Section 15/61/85 of the NDPS Act at Police Station Nurmahal, District Jalandhar and FIR No.83 dated 10.10.2019, registered under Section 15/61/85 of the NDPS Act at Police Station Nurmahal, District Jalandhar, therefore, he does not deserve the concession of regular bail. However, he could not refute that out of total 13 prosecution witnesses

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only 06 PWs have been examined till date; petitioner is in custody for the last 02 years 11 months and 02 days and the trial may take a considerable time to conclude.

8. Refuting the above contention of the learned State counsel, learned counsel for the petitioner submits that in FIR No.16 dated 25.02.2017, the petitioner has already undergone the sentence and in FIR No.83 dated 10.10.2019, he is on bail. He further relies upon the judgment of Hon'ble Supreme Court in ***“Maulana Mohd. Amir Rashadi Vs. 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 hereinbelow:-

“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.”

9. I have heard learned counsel for the parties and perused the record.

10. In view of the custody period undergone by the petitioner, it is apposite to refer to a few judgments of Hon'ble Supreme Court in

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this regard wherein Hon’ble Supreme Court has granted the concession of bail solely on ground of long custody :-

Case Number	Date of Decision	Title of case	Period which the accused had undergone when granted bail by Hon'ble Supreme Court
Criminal Appeal No.245/2020	07.02.2020	Chitta Biswas @ Subhas Vs. the State of West Bengal	1 year and 7 months
Criminal Appeal No.668/2020	12.10.2020	Amit Singh Moni Vs. State of Himachal Pradesh	2 years and 7 months
Special Leave to Appeal (Crl.) No.5187 of 2021	10.11.2021	Kulwant Singh Vs. The State of Punjab	More than 2 years
Special Leave to Appeal (Crl.) No.5769/2022	01.08.2022	Nitish Adhikary @ Bapan Vs. the State of West Bengal	1 year and 7 months
Special Leave to Appeal (Crl.) No.4173 of 2022	04.08.2022	Shariful Islam @ Sarif Vs. the State of West Bengal	1 year and 6 months
Criminal Appeal No.1169 of 2022	05.08.2022	Gopal Krishna Patra @ Gopalrusma Vs. Union of India	2 years 1 month and 17 days
Special Leave to Appeal (Crl.) No.5530-2022	22.08.2022	Mohammad Salman Hanif Shaikh Vs. the State of Gurjarat	About 2 years
Special Leave to Appeal (Crl.) No.7840 of 2022	31.10.2022	Shahjad Vs. The State of Uttar Pradesh	About 2 years

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11. Without commenting anything on merits of the case and considering the fact that the petitioner is in custody for the last about 02 years 11 months and 02 days; investigation is complete; challan stands presented; charges have been framed and out of 13 PWs, only 06 PWs have been examined so far and the trial is likely to take considerable time to conclude, this petition is allowed and the petitioner is directed to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate concerned. However, in addition to conditions that may be imposed by the trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions:-

(i) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority.

(ii) The petitioner shall remain present before the Court on the dates fixed for hearing of the case.

(iii) The petitioner shall not absent himself from the Court proceedings except on the prior permission of the Court concerned.

(iv) The petitioner shall surrender his passport, if any, (if already not surrendered), and in case he is not holder of the same, he shall swear an affidavit to that effect.

(v) The petitioner shall also file his affidavit before the concerned Court, mentioning his ordinary place of residence and number of mobile phone, which shall be used by him during the pendency of the trial. In case of change of place of residence/mobile number, he shall share the details with the concerned Court/learned trial Court.

(vi) In case, the petitioner involves in any other criminal activity, during the pendency of the trial, it shall

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be viewed seriously and the prosecution shall be at liberty to move a petition for cancellation of bail granted to him.

(vii) The concerned Court may insist on two heavy local sureties and may also impose any other condition, in accordance with law, while accepting the bail bonds and surety bonds of the petitioner.

(viii) The petitioner shall report every 1st Monday of English calendar month before the concerned SHO till the conclusion of the trial and the SHO shall mark his presence by making an entry in the rojnamcha. In case, he does not report on every 1st Monday before the concerned SHO, it shall be viewed seriously and the concession granted to him shall be liable to be cancelled and the State of Punjab shall be at liberty to move an appropriate application in this regard.

12. In case of breach of any of the aforesaid conditions and those which may be imposed by the trial Court, the prosecution shall be at liberty to move an application for cancellation of bail of the petitioner.

(NAMIT KUMAR)
JUDGE

22.07.2024

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No