

CRM-M-17835 of 2024

2024:PHHC:134174



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

CRM-M-17835 of 2024
Date of decision: 15.10.2024

Moin @ Moeen Raja

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Ms. Manjot Kaur, Advocate,
for the petitioner.

Mr. Surya Kumar, AAG, Punjab.

NAMIT KUMAR, J. (ORAL)

1. This petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case FIR No.134 dated 01.10.2022 under Sections 18/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Ghanour, District Patiala.
2. According to the prosecution, on 01.10.2022, petitioner was apprehended in possession of 2 kilogram 600 gram opium.
3. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case as he has not committed the alleged offence. She further submits that petitioner is a victim at the hands of police party as the alleged recovery has been planted upon the petitioner.

She further submits that no proper procedure to conduct search of the

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petitioner has been followed. Learned counsel further submits that investigation in the present case is complete; challan has been presented; charges have been framed and out of total 13 prosecution witnesses only 03 witnesses have been examined. She submits that petitioner is in custody since 01.10.2022. He is not involved in any other case. No recovery is to be effected from the petitioner. Trial may take a considerable time to conclude. Therefore, no fruitful purpose would be served by detaining the petitioner behind bars.

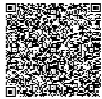
4. *Per contra*, learned State counsel, while placing on record custody certificate, submits that recovery effected from the petitioner is commercial in nature. However, he has not disputed that investigation in the present case is complete; challan has been presented; charges have been framed and out of total 13 prosecution witnesses only 03 witnesses have been examined as yet. He submits that petitioner is in custody since 01.10.2022 and he is not involved in any other case. Trial may take a considerable time to conclude. The next date of hearing before the trial Court is 16.10.2024.

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

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

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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

7. The Hon’ble Supreme Court in *Special Leave to Appeal (Crl.) No.4169 of 2023 – Rabi Prakash v. The State of Odisha* decided on **13.07.2023** has held that in case of prolonged incarceration, conditional liberty will override the statutory embargo under Section 37 of the NDPS

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Act as the prolonged incarceration is against fundamental right guaranteed under Article 21 of the Constitution of India.

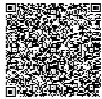
8. Keeping in view the custody of the petitioner, which is 02 years and 11 days; investigation in the present case is complete; challan has been presented; charges have been framed and out of total 13 prosecution witnesses only 03 witnesses have been examined as yet; petitioner is not involved in any other case and trial may take a considerable time to conclude, however, without commenting upon the merits of the case, the petitioner is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court. 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 mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence similar to the one alleged in the present case.
- (v) The petitioner shall deposit his passport, if any with the trial Court.
- (vi) The petitioner shall not in any manner try to delay the trial.

9. 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.

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10. The petition stands disposed off accordingly.

15.10.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No