

2024:PHHC:125982



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

202

Date of decision: 23.09.2024

1. CRM-M No.46474 of 2023 (O&M)

Nazeer Mohammad

....Petitioner

Versus

Union of India and another

....Respondents

2. CRM-M No.47150 of 2023 (O&M)

Mohammad Rafi

....Petitioner

Versus

Union of India and another

....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Ruhani Chadha, Advocate
for the petitioner(s) (in both the petitions)

Ms. Gurmeet Kaur Gill, Advocate (Sr. Panel Counsel)
for respondent No.1 (in CRM-M-46474-2023)

Mr. Sourabh Goel, Advocate (Sr. Panel Counsel)
for respondent No.1 (in CRM-M-47150-2023)

Mr. Surya Kumar, AAG, Punjab
for respondent No.2 (in both the petitions)

NAMIT KUMAR J. (Oral)

1. This order shall dispose of CRM-M Nos.46474 and 47150 of 2023, as common questions of law and facts are involved therein for adjudication. For the sake of convenience, facts are taken from CRM-M No.46474 of 2023, titled as “Nazeer Mohammad vs Union of India and another”.

2024:PHHC:125982



2. Prayer in both these petitions filed under Section 439 Cr.P.C., is for grant of regular bail to the petitioners namely Nazeer Mohammad and Mohammad Rafi, in case Complaint (Annexure P-1) bearing NCB Crime No.53 dated 22.08.2021, registered under Sections 8, 20, 25, 27-A, 29, 60 and 61 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') at Police Station Narcotic Control Bureau, Amritsar.

3. As per prosecution case, the allegations levelled in the FIR are that on 21.08.2021, a specific information was received from a reliable source by Sandeep Kumar Yadav, Assistant Director, NCB, Sub-Zone, Amritsar that on 21.08.2021 at about 22.15 hrs, one person Yashin residing in Chamba area had sent two person namely Nazir Mohammad and Mohammad Rafi (petitioners herein) along with 25 Kgs Charas in blue colour canter, to further hand over the same to one Rahul Uppal resident of Jawahar Nagar, District Amritsar near Verka Chowk in Amritsar area on 22.08.2021 at about 08:00 hrs. Thereafter, the said information was reduced into writing and a team was constituted and reached at Ladpalwan Toll Plaza, Pathankot and on 22.08.2021 at about 03:00 hrs, the said blue colour canter was seen coming from Pathankot side towards Ladpalwan Toll Plaza and after giving signal, the driver of the canter stopped the vehicle bearing registration No.HP-73-1465 and on conducting search of the said vehicle, recovery of 24.500 Kgs. Charas was effected and on these allegations, the present complaint was registered.

2024:PHHC:125982



4. Learned counsel for the petitioner(s) *inter alia* contends that the petitioners are innocent and have been falsely implicated in the present case. He further submits that the petitioners are in custody for the last 03 years and 26 days and they are not involved in any other case.

5. Learned counsel for the petitioner(s) further submits that the investigation in the present case is complete as challan stands presented; charges have been framed and out of total 22 prosecution witnesses, only 04 PWs have been examined so far and the trial is likely to take considerable time to conclude and, therefore, no fruitful purpose would be served by detaining the petitioners behind the bars.

6. Learned counsel for the petitioner(s) 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 ***Criminal Appeal No.943 of 2023 titled as "Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)"*** decided on 28.03.2023 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.

2024:PHHC:125982



7. Per contra, learned counsel for the respondent – NCB as well as learned State Counsel, have opposed the prayer for grant of regular bail to the petitioners on the ground that the petitioners were found in conscious possession of 25 Kgs of Charas, therefore, they do not deserve the concession of regular bail. However, they could not refute that out of total 22 prosecution witnesses, only 04 PWs have been examined till date; the next date of hearing, fixed before the trial Court is 21.10.2024; both the petitioners are in custody for the last 03 years and 26 days and the trial may take a considerable time to conclude.

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

9. In view of the custody period undergone by both the petitioners, it is apposite to refer to a few judgments of Hon’ble Supreme Court in this regard wherein the 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

2024:PHHC:125982



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

10. Further the Hon’ble Supreme Court in **“Ramlal vs The State of Rajasthan”**, passed in **SLP (Crl.) No.9510 of 2024**, decided on 17.09.2024, **“Tajmul SK vs The State of West Bengal”**, passed in **SLP (Crl.) No.3047 of 2024**, decided on 23.07.2024, **“Ajay Rathore vs The State of Chhattisarah”**, passed in **SLP (Crl.) No.7470 of 2024**, decided on 30.07.2024, **“Kousar Ali Sarkar @ Mamon vs The State of West Bengal”**, passed in **SLP (Crl.) No.6785 of 2024**, decided on 30.07.2024, **“Abdur Rahim @ Rahim @ Abdul Rahim vs The State of West Bengal”**, passed in **SLP (Crl.) No.19203 of 2024**, decided on 08.07.2024, **“Apa Debnath vs The State of West Bengal”**, passed in **SLP (Crl.) No.7761 of 2024**, decided on 15.07.2024, **“Balkishan vs**

2024:PHHC:125982



The State of Madhya Pradesh", passed in SLP (Crl.) No.8415 of 2024, decided on 29.07.2024, **"Deepak Dhaniram Sharma and another vs The State of Maharashtra"**, passed in SLP (Crl.) No.6613-6614 of 2024, decided on 08.07.2024, **"Deepoo Singh vs The State of West Bengal"**, passed in SLP (Crl.) No.7758 of 2024, decided on 29.07.2024, **"Mohammad Raqibuddin vs The Union of India"**, passed in SLP (Crl.) No.2956 of 2024, decided on 11.07.2024, **"Rina Dey and another vs The State of West Bengal"**, passed in SLP (Crl.) No.6697 of 2024, decided on 08.07.2024 and **"Ravinder Taksali vs The Union of India (NCB)"**, passed in SLP (Crl.) No.8585 of 2024, decided on 11.09.2024, by taking into account long custody of the accused persons, having no criminal antecedents, has granted the concession of bail.

11. Without commenting anything on merits of the case and considering the fact that both the petitioners are not involved in any other case; they are in custody for the last about 03 years and 26 days; investigation is complete; challan stands presented; charges have been framed and out of 22 PWs, only 04 PWs have been examined so far and the trial is likely to take considerable time to conclude, both these petitions are allowed and the petitioners namely Nazeer Mohammad and Mohammad Rafi, are directed to be released on regular bail subject to their 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

2024:PHHC:125982



Magistrate concerned, the petitioners shall remain bound by the following conditions:-

- (i) The petitioners 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 petitioners shall remain present before the Court on the dates fixed for hearing of the case.*
- (iii) The petitioners shall not absent themselves from the Court proceedings except on the prior permission of the Court concerned.*
- (iv) The petitioners shall surrender their passport, if any, (if already not surrendered), and in case they are not holder of the same, they shall swear an affidavit to that effect.*
- (v) In case, the petitioners involves in any other criminal activity, during the pendency of the trial, it shall be viewed seriously and the prosecution shall be at liberty to move a petition for cancellation of bail granted to them.*
- (vi) 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 petitioners.*

11. 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 petitioners.

(NAMIT KUMAR)
JUDGE

23.09.2024

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No