



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

**CRM-M-57663 of 2023 (O&M)
Date of decision : July 22, 2024**

Lakhwinder Singh @ Lakha

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present :-Mr. J. S. Sandhu, Advocate
for the petitioner.

Mr. Adeshwar Singh Pannu, AAG., Punjab.

JASGURPREET SINGH PURI, J (Oral)

1. The present is a second petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 160 dated 07.10.2021, under Section 15/27-B/29/61/85 of the NDPS Act, 1985, registered at Police Station Vairoke District Fazilka.
2. It is submitted by learned counsel for the petitioner that petitioner was granted interim bail by a co-ordinate Bench of this Court vide order dated 01.03.2024 and he is still on interim bail and today the petitioner has come present in Court physically.

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3. Learned counsel for the petitioner has further submitted that he identifies the petitioner and therefore, he may be considered to be in deemed custody for the purpose of grant of regular bail.

4. Learned counsel for the petitioner submits that the petitioner is in custody since 7.10.2021, which is 2 years and 4 months and in the present case allegations against the petitioner were that the police had intercepted two cars and from one of the cars 62 kgs. of poppy husk was recovered in which the petitioner was not sitting. He was in another car from where 90 kgs. of poppy husk was recovered which was following the aforesaid car. The petitioner was driver of the car from where 90 kgs. of poppy husk was recovered. He has submitted that the other co-accused Krishan Singh @ Bittu and Rameshwar Lal have also filed separate bail petitions in **CRM-M-42302-2023** and **CRM-M-50749-2023** and the same were allowed by this Court vide common order dated 7.11.2023 (Annexure P-3). He has submitted that both the aforesaid accused were arrested from the same car of which the petitioner was driver. He has submitted that one of the primary reasons for granting regular bail to the aforesaid accused was that the trial of the case was not progressing and now more than 2 years and 3 months have elapsed and only 6 prosecution witnesses have been examined.

5. He also submitted that although the petitioner is not exactly at parity with the aforesaid co-accused on the ground that the petitioner was the driver of the car, whereas, the aforesaid co-accused was the passenger but the petitioner deserves the concession of regular bail on the ground that the aforesaid co-accused was also granted bail on the ground of prolonged trial. While referring to the aforesaid, he submitted that the custody of the petitioner is now 2 years and 4 months and the charges in the



present case were framed on 25.04.2022, which is more than 2 years and 2 months and only 6 prosecution witnesses have been examined out of 22 witnesses. He submits that the petitioner is involved in one more case under the NDPS Act.

6. He further submitted that the aforesaid bail petitions of aforesaid co-accused, namely, Krishan Singh @ Bittu and Rameshwar Lal were allowed on the ground that there was delay in the trial and while referring to the judgment of Hon'ble Supreme Court in **“Satender Kumar Antil versus Central Bureau of Investigation and another”, 2022(10) SCC 51, “Mohd. Muslim @ Hussain versus State (NCT of Delhi)”, 2023 AIR(SC) 1648, “Dheeraj Kumar Shukla versus The State of Uttar Pradesh”, 2023 SCC Online SC 918 and “Rabi Prakash versus The State of Odisha”, Special Leave to Appeal (Criminal) No.4169 of 2023,** and were granted bail in the light of Article 21 of the Constitution of India and the bar contained under Section 37 was not made applicable in the aforesaid cases. He also submitted that the same is the position in the present case pertaining to the present petitioner- Lakhwinder Singh @ Lakha. He submits that the petitioner may be considered for the grant of regular bail.

7. On the other hand Mr. Adeshwar Singh Pannu, AAG., Punjab submitted that so far as the custody of the petitioner is concerned, the same is correct and the petitioner is in custody for about 2 years and 4 months. Six witnesses have been examined. He submitted that it is correct that the aforesaid accused had been granted bail by this Court vide order dated 7.11.2023 (Annexure P-3) in CRM-M-42302-2023 and CRM-M-50749-2023 but he has opposed the bail of the petitioner on the ground that he is

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involved in one more case and he was driving the car from where 90 kgs. of poppy husk was recovered.

8. I have heard the learned counsel for the parties.

9. The petitioner is in custody since 7.10.2021, which is more than 2 years and 4 months. He was granted interim bail on 01.03.2024. As per learned counsel for the parties he has not violated any condition of bail. He is also present in Court today and is identified by learned counsel for the petitioner. He, therefore is deemed to be in custody for grant of regular bail. The petition of Krishan Singh @ Bittu who was travelling in the same car which the petitioner was driving and Rameshwar Lal who was in the other car from where 62 kgs. of poppy husk was recovered have been granted regular bail by this Court. This Court is of the view that since the petitioner has suffered incarceration for more than 2 years and 4 months and the trial of the case is not progressing, the petitioner would be entitled for grant of regular bail as he is at par with the aforesaid co-accused, namely, Krishan Singh @ Bittu and therefore, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner in light of Article 21 of the Constitution of India as well as in the light of judgments of Hon'ble Supreme Court as aforementioned. Further it has been submitted by learned counsel for parties that the petitioner has not violated any condition of interim bail.

10. Consequently, the present petition is allowed. The interim bail granted by this Court on 01.03.2024 is made absolute. The petitioner shall remain on same bail/surety bond.



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11. However, anything observed hereinabove shall not be treated as an expression of opinion on the merits of the case and is meant for the purpose of deciding the presents petition only.

July 22, 2024
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(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable :	No