

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-20629-2022

Date of Decision:- 31 .05.2022

Ghanso @ Kalo.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Parminder Singh Sekhon, Advocate for the Petitioner.

Mr. Kirat Singh Sidhu, Deputy Advocate General Punjab.

JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this petition under Section 439 Cr. P.C. is for the grant of regular bail in case FIR No.84 dated 29.08.2019 under Sections 21 and 29 of the NDPS Act, Police Station Special Task Force Phase-IV, District SAS Nagar (Mohali).

The brief facts of the case are that FIR came to be registered on the basis of secret information that Lakho Rani wife of Late Jagga Singh, Ghanso @ Kalo wife of late Sh. Surinder Singh @ Chhinda (present petitioner) and Sukhwinder Singh @ Binder were doing the business of selling Heroin in connivance with each other. The said Heroin had been supplied by Jassu daughter of Jaggi Singh and all the three accused were coming towards Sangrur Basti for supplying the same in their car. Based on the said information a *naka* was laid and white swift car was stopped. The

car was being driven by Sukhwinder Singh @ Binder (since granted bail vide Annexure P-3) and the owner of the car is said to be the present petitioner. 500 Grams of Heroin was recovered from the car.

The Counsel for the petitioner submits that there is violation of Section 42 of the NDPS Act and the petitioner could not be said to be in conscious possession as the bag was lying near the handbrake of the car and the petitioner was sitting on the rear seat. He further contends that petitioner is of the age of 37 years and her husband has already expired because of which the burden of taking care of her young children falls upon her. He lastly contends that the petitioner is in custody since 29.08.2019 and the prosecution evidence is nowhere near completion since 32 witnesses are cited in the list of witnesses but only three have been examined so far. He thus prays that he be granted the concession of regular bail.

The Counsel for the State on the other hand submits that the vehicle belongs to the petitioner. Admittedly, the recovery has been effected from the said vehicle and it would be a matter of adjudication during the trial as to whether the petitioner was in conscious possession or not. Be that as it may she does not deserve the concession of regular bail.

I have heard counsel for both the sides at length.

The Hon'ble Supreme Court has considered the grant of regular bail in cases involving commercial quantity where there is a delay in the conclusion of the trial. In the case of **Chitta Biswas @ Subhas Vs. The State of West Bengal Crl. Appeal No(s)245/2020 (@ SLP(Crl.) NO.8823/2019 Decided on 07.02.2020** where the recovery was of commercial quantity of phensydryl cough syrup and 04 out of 10 witnesses had been examined, the court granted the concession of bail after the

accused had been in custody for approximately 01 year and 07 months.

In the case of ***Amit Singh Moni Vs. State of Himachal Pradesh Crl. Appeal No.668 of 2020 (Arising Out of SLP (Criminal) No.3813 of 2020) Decided on 12.10.2020*** where the recovery was of 3Kg 285 grams of Charas. The Hon'ble Supreme Court granted bail after the accused had undergone a total custody period of 02 years and 07 months.

In the case of ***Vipan Sood Vs. State of Punjab & Anr. CRM-M-20177-2020(O&M) Decided on 25.02.2021*** this Court had granted the concession of regular bail to the petitioner from whom there had been a recovery of 3.8 Kgs of Charas after he had undergone a total custody period of 01 year and 07 months. The NCB filed an SLP against the said order and the same came to be dismissed by the Hon'ble Supreme Court vide 24.08.2021 in Special Leave to Appeal (Crl.) No(s).5852/2021.

In the case of ***Kulwant Singh Vs. State of Punjab, Spl Leave to Appeal (Crl.) No.5187/2021 Decided on 10.11.2021*** where the recovery was of commercial quantity looking at the age of the petitioner and incarceration of 02 years the accused was granted the concession of bail.

In the case of ***Mahmood Kurdeya Vs. Narcotics Control Bureau Crl. Appeal No.1570/2021 (@ SLP (Crl.) No.7085/2021) Decided on 07.12.2021*** where the recovery was of huge quantity of contraband the accused was granted the concession of bail after he had undergone 03 years and 03 months of custody.

A perusal of the aforementioned judgments would show that the Hon'ble Supreme Court has also considered and granted the concession of regular bail in cases where the accused has undergone a substantial period of custody despite the rigors of Section 37 of the NDPS Act.

Therefore, on account of delay in the conclusion of the trial, the rigors of Section 37 of the NDPS Act can be relaxed to an extent and the prayer of the accused for grant of bail can be considered despite the fact that she has been found in possession of commercial quantity of contraband.

The petitioner in the present case is in custody since 29.08.2019 and only three out of 32 witnesses have been examined so far. Therefore, without commenting on the merits of the case, the present petition is allowed and the petitioner **Ghanso @ Kalo** wife of Late Surinder Singh @ Chhinda is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate concerned.

The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that she is not involved in any other crime other than the present case.

If the petitioner indulges in similar offence for which she is currently charged, the State would be at liberty to move an application for cancellation of bail.

Petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

May 31, 2022

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>