



CRM-M-45882-2024

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

102+203

CRM-48729-2024 in/and
CRM-M-45882-2024 (O & M)
Date of decision: 17.12.2024

Himmat @ Hemant Kumar

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. L.S.Sekhon, Advocate,
for the petitioner.

Mr. Manipal Singh Atwal, DAG, Punjab.

AMAN CHAUDHARY, J. (ORAL)

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Allowed as prayed for. Annexure A-1 is taken on record.

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1. Prayer in the present petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in FIR No.30 dated 01.03.2021, registered under Section 22-C, 25 and 29 NDPS Act, 1985 (Sections 420, 467, 468, 471 and 120-B IPC added later on), at Police Station Division No.4, Ludhiana, District Ludhiana.
2. Learned counsel contends that the petitioner is in custody for the last more than 03 years and 09 months. He has been falsely implicated in the case. There is non-compliance of mandatory provisions of Sections



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42 and 50 NDPS Act. No independent witness has been joined at the time of recovery. Co-accused, who was apprehended alongwith the petitioner and against whom, 05 other cases of similar nature were registered on the basis of disclosure statement and had been in custody for more than 03 years and 08 months, has been granted regular bail by the Coordinate Bench, vide order dated 02.12.2024 (Annexure A-1), while the petitioner is involved in one another case under the same Act. Charges have been framed on 21.03.2023, however, out of 55 prosecution witnesses, 07 have been given up and only 02 have been examined so far. Besides this, an application under Section 311 Cr.P.C. has been filed by the State, which is pending consideration. Thus, the trial is moving at a snail's pace and is not likely to be concluded anytime in near future. Reliance is placed on the judgment of Hon'ble the Supreme Court in **Maulana Mohd. Amir Rashadi vs. State of U.P. and others**, 2012(2) SCC 382.

3. The custody certificate dated 16.12.2024, filed by learned State counsel is taken on record, as per which, the petitioner is behind bars for 03 years, 09 months and 05 days.

4. Learned State counsel opposes the bail on the ground that commercial quantity of contraband was recovered from the petitioner, who was apprehended at the spot and is involved in more case. He is, however, unable to controvert the submissions made regarding the stage of the case and co-accused having been enlarged on bail.

5. Heard.



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6. Hon'ble the Supreme Court in the case of **Maulana Mohd. Amir Rashadi** (Supra) had held that, "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."

7. Hon'ble the Supreme Court in the case of **Dheeraj Kumar Shukla vs. The State of Uttar Pradesh**, SLP (Criminal) No.6690/2022 decided on 25.01.2023 observed that in case of long custody period, involving quantity recovered to be of commercial nature, where the trial is yet to commence, though charges had been framed, the condition of Section 37 of NDPS Act can be dispensed with. In the case of **Bhupender Singh vs. Narcotic Control Bureau** (2022) 2 RCR (Crl.) 706, the Division Bench of this Court observed with regard to achieving balance between right to speedy trial guaranteed under Article 21 of the Constitution of India and rigors of Section 37 of NDPS Act. Similarly, in the case of **Shariful Islam @ Sarif vs. The State of West Bengal** SLP (Crl.) No.4173/2022, decided on 04.08.2022, Hon'ble the Supreme Court granted bail to the petitioner in a case of recovery of commercial quantity of contraband, considering incarceration for over 1 year and 6 months and there being no likelihood of completion of trial in the near future. In the case of **Munasi Masih vs. State of Punjab**, CRM-M-31504-2022,



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decided on 06.02.2023, this Court granted bail to a first offender from whom commercial quantity of contraband had been recovered and only 2 out of 13 PWs have been examined, by observing that in view of delayed trial, the rigors of Section 37 of NDPS Act can be diluted to an extent and the petitioner can be granted bail, keeping in mind the right to a speedy trial as envisaged Article 21 of the Constitution of India.

8. Considering the facts and circumstances of the case, in particular that the petitioner is languishing in jail for the last 03 years, 09 months and 05 days; co-accused having been granted bail; charges were framed on 21.03.2023, however, as many as 46, out of 55 prosecution witnesses, are yet to be examined; the trial is likely to take a considerable time, thus further incarceration of the petitioner would be violative of his right enshrined under Article 21 of the Constitution of India and the rigors of Section 37 of NDPS Act can be diluted bearing in mind the right to a speedy trial, thus, the present petition for grant of regular bail deserves to be allowed.

9. As a result, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate concerned and subject to his not being required in any other case. The petitioner shall abide by the following conditions:-

- (i) The petitioner will not tamper with the evidence during the trial.
- (ii) The petitioner will not pressurize/ intimidate the



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prosecution witnesses.

- (iii) The petitioner will appear before the trial Court on each and every date fixed, unless is exempted by a specific order of Court.
- (iv) The petitioner shall not commit an offence similar to the offence of which, he is an accused, or for commission of which he is suspected of.
- (v) The petitioner shall not directly or indirectly coerce, induce, threaten or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer or tamper with the evidence in any manner.
- (vi) The petitioner shall not in any manner misuse his liberty.
- (vii) The petitioner shall furnish his address and mobile number to the Trial Court forthwith and shall not change the same till the conclusion of the trial and in case for any reason, the petitioner seeks to change any of the aforesaid, the same shall be done only with prior intimation to the learned Trial Court, stating the reason for the same.
- (viii) The petitioner shall not leave the country without prior permission of the trial Court.
- (ix) The trial Court/Duty Magistrate may impose any other condition, as deemed appropriate while releasing the petitioner.

10. It is made abundantly clear that in case there is any breach of the aforesaid conditions, the State shall be at liberty to seek cancellation of bail as granted to the petitioner by this order.

11. In view of the above, it is clarified that the observations made herein are limited for the purpose of present proceedings and would not be construed as an opinion on the merits of the case and the trial would proceed independently of the aforesaid observations.

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12. Pending application, if any, shall stand disposed of.

17.12.2024

parveen kumar

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No