

CRM-M-40540-2019 (O&M)

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

**CRM-M-40540-2019 (O&M).
Decided on: February 26, 2020.**

Babbu

.. Petitioner

VERSUS

State of Punjab

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.Vinod Kumar Kaushal, Advocate,
for the petitioner.**

Mr.Sarabjit Singh Cheema, AAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 439 of the Code of Criminal Procedure (for short the 'Cr.P.C.'), seeking regular bail in FIR No.1 dated 1.1.2019, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') registered at Police Station, Maqboolpura, District Police Commissionerate, Amritsar, Amritsar.

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Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case. He submits that as per the FIR itself although the petitioner was caught on the spot but the allegation in the FIR is that he had thrown the bag of polythene which was later on recovered by the police, however, the compliance of Section 50 of the NDPS Act, was not made. He has further submitted that in the present case investigation is already complete and the charges have already been framed a long time back i.e. on 4.5.2019 and out of 11 witnesses cited by the prosecution none has been examined and the petitioner is in custody since the date of his arrest i.e. 1.1.2019 which is more than one year. Learned counsel for the petitioner has further submitted that the petitioner is not involved in any other case including any case under the NDPS Act.

On the other hand, learned State counsel, on instructions from the police official assisting him, states that it is correct that the charges in the present case were framed on 4.5.2019 and out of 11 witnesses cited by the prosecution none has been examined. However, he has submitted that although the summons have been issued to the witnesses but the evidence could not be recorded. On specific instructions from the officer present in the Court, learned State counsel has expressed his helplessness to show that as to why there is delay in examination of the prosecution witnesses.

So far as the custody period of the petitioner is concerned, learned State counsel states that there is no dispute with regard to the fact that the petitioner is in custody since 1.1.2019 i.e. for more than one year and that the petitioner is not involved in any other case and even

there is no other case under the NDPS Act pending against the petitioner.

I have heard the learned counsel for the petitioner as well as learned State counsel and have gone through the record of the case.

It is not disputed that the petitioner is in custody since 1.1.2019 and the investigation is already complete and the charges have already been framed on 4.5.2019 and out of 11 witnesses cited by the prosecution none has been examined till date despite the fact that summons were issued to the prosecution witnesses. No explanation is forthcoming as to why there has been delay in the entire process.

The contention of the learned counsel for the petitioner that the petitioner has been wrongly roped up in the present case especially in view of the assertion made by him that there is non-compliance of Section 50 of the NDPS Act, coupled with the fact that the petitioner is not involved in any other case, this Court would consider this aspect in the light of provisions of Section 37 of the NDPS Act which bars grant of bail when the alleged contraband recovered is of commercial quantity. In the present case admittedly the alleged recovery is of 1120 tablets which is commercial quantity and therefore, it is to be seen as to whether this can be considered in the light of provisions of Section 37 of the NDPS Act or not. The provisions of Section 37 NDPS Act, are reproduced as under:-

“37. Offences to be cognizable and non-bailable

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or Section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force, on granting of bail.”

Considering the totality of the facts and circumstances of the case as discussed above and especially it is not the case of the prosecution that in case the petitioner is enlarged on bail then he may tamper with the evidence or influence the witnesses or he may repeat the offence and apart from that the assertion of the learned counsel for the petitioner that even the provisions of Section 50 of the NDPS Act were not

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complied with which may result in vitiating the trial itself and becomes a good ground for presuming that petitioner is not guilty and therefore, it would be certainly a fit case where departure can be made under the provisions of Section 37 of the NDPS Act. Thus, I deem it fit and appropriate to admit the petitioner on bail. Consequently, the petition is allowed. It is ordered that the petitioner shall be released on bail on his furnishing bail bond/surety bond to the satisfaction of the trial Court.

Since there has been delay in the trial, at this stage, it is expected that Commissionerate of Police, Amritsar, shall look into the matter and take appropriate measures in accordance with law.

Anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant only for the purpose of decision of present petition.

February 26, 2020.
raj arora

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No