

CRM-M-10306-2022

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

213

CRM-M-10306-2022

Date of Decision: October 27, 2022

Rajinder Singh @ Raj

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. Kunal Choksi, Advocate and
Mr. Sumeet Pal Singh Khaira, Advocate
for the petitioner.

Mr.Manipal Singh Atwal, DAG, Punjab.

AMAN CHAUDHARY, J.(Oral)

The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in respect of FIR No.134 dated 02.07.2020, under Section 21 of NDPS Act, registered at Police Station Shimlapuri, District Ludhiana, Punjab.

Learned counsel contends that the petitioner has been in custody for the last 02 years, 03 months and 24 days. He further contends that as per the recovery memo, Annexure P-3, the contraband alleged to have been recovered from the possession of the petitioner was in a transparent polythene bag. Learned counsel while referring to the recovery memo, Annexure P-3 also states that there is non-compliance of Section 50 of NDPS Act, inasmuch as it has been mentioned therein that two clean shaven persons were produced before the IO by the complainant SI Jarnail Singh alongwith the recovered tablets from the polythene bag along with the

motorcycle. It is only thereafter that notice under Section 50 of NDPS Act had been given which renders such notice redundant. He further submits that the alleged recovery from the petitioner is of 7000 tablets which did not have any batch number or manufacturing details such as the name of the manufacturer, expiry date etc and out of which only 50 tablets were sent to the FSL, which would not prove that the entire recovered contraband was the same. Moreover, there was a delay of 22 days in sending it, which is in violation of standing order 1/89 issued by the Department of Revenue, Ministry of Finance, Government of India, wherein it has been stated that the sample has to be sent as soon as possible from the time of recovery. He further submits that the alleged recovery as per the recovery memo, Annexure P-3 was effected from a transparent polythene bag. He places reliance on a judgement passed by a co-ordinate Bench this Court in case **CRM-M-25942 of 2021 titled Baljinder Singh @ Binda Vs. State of Punjab, passed on 12.11.2021** wherein it is held that it is improbable that a drug trafficker would carry contrabands in a transparent polythene bag without attempting to conceal the drugs. He submits that the challan has been presented on 16.10.2020, charges have also been framed on 15.01.2022, but out of a total of 12 witnesses, only one witness has been examined as of date and he submits that petitioner is not involved in any other case.

He relies upon the orders in **Special Leave to Appeal (Crl.) No.5769 of 2022 titled Nitish Adhikary @ Bapan Vs. The State of West Bengal decided on 01.08.2022, Special Leave to Appeal (Crl.) No.4173 of 2022 titled Shariful Islam @ Sarif Vs. The State of West Bengal decided**

on 04.08.2022 and Criminal Appeal No.1169 of 2022 titled Gopal Krishna Patra @ Gopalrusma Vs. Union of India decided on 05.08.2022.

Custody certificate filed by learned State counsel is taken on record.

Contrarily, learned State counsel on instructions from SI Ranjit Singh opposes the bail on the ground that the petitioner was apprehended on the spot alongwith his co-accused and commercial quantity of contraband has been recovered from them. He further submits that inasmuch as the delay in sending the sample is concerned, the same is a matter of trial. He has however, been unable to controvert the fact that the petitioner has been in custody for last 2 years, 3 months and 24 days and that there is no other case against him as also the fact that out of a total of 12 witnesses, only one witness has been examined till date.

I have heard learned counsel for the parties.

Keeping in view the facts and circumstances of the case in particular the custody of the petitioner in the case being for the last more than 2 years and 3 months; charges have been framed; there being no other case against the petitioner; since out of a total of 12 witnesses, only one witness having been examined so far;, trial is likely to take considerable time to conclude, his further detention behind bars would not serve any useful purpose, the present petition for grant of regular bail deserves to be allowed.

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 him not being required in any other case. The petitioner shall abide by the following conditions:-

- “1. The petitioner will not tamper with the evidence during the trial.*
- 2. The petitioner will not pressurize/ intimidate the prosecution witnesses.*
- 3. The petitioner will appear before the trial Court on each and every date fixed, unless is exempted by a specific order of Court.*
- 4. 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.*
- 5. 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.*
- 6. The petitioner shall not in any manner misuse his liberty.*
- 7. Any infraction shall entail in withdrawal of the benefit granted by this Court.”*

In view of the above, this Court makes it clear that the observations made herein above are limited for the purpose of present proceedings and would not be construed as any opinion on the merits of the case and the trial would proceed independently of the aforesaid observations.

October 27, 2022
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(AMAN CHAUDHARY)
JUDGE

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