

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

257

CRM-M-649-2023 (O&M)

Date of decision: 11.04.2023

MADAN SINGH

....Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. R.P. Dhir, Advocate for the petitioner.

Mr. H.S. Sullar, Sr. DAG Punjab.

AMAN CHAUDHARY. J.

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.174 dated 12.10.2022, under Sections 20/61/85 of the NDPS Act registered at Police Station Khanna City-2, District Khanna.

Learned counsel contends that the petitioner is in custody for the last 6 months. He is HIV patient and there is no criminal case pending against him. Challan was presented on 24.02.2023, however, charges have not been framed and in all there are 12 witnesses.

Learned State counsel has filed short reply dated 11.04.2023 by way of an affidavit of Shivraj Singh Nandgarh, PPS, Superintendent, Central Jail Ludhiana, as also the custody certificate dated 10.04.2023, which are taken on record. As per the same, the custody of the petitioner is 5 months and 27 days.

Learned State counsel opposes the bail on the ground that recovery of

1 kg 500 grams of charas was effected from the petitioner, which falls under the category of commercial quantity as per the Schedule of the NDPS Act. He on instructions affirms the petitioner being HIV patient and is on treatment. He is however unable to controvert the submissions with regard to stage of trial and the petitioner being not involved in any other case.

Hon'ble The Supreme Court of India 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 the right to speedy trial guaranteed under Article 21 of the Constitution of India and rigors of Section 37 of NDPS Act. In the case of **Munasi Masih vs. State of Punjab**, CRM-M-31504-2022, decided on 06.2.2023, 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.

In view of the afore-referred judgments, facts and circumstances of the case and, in particular the medical condition of the petitioner, he being HIV patient and is in custody for the last 5 months and 27 days; he is not involved in any other case; though challan was presented on 24.02.2023, however, charges are yet to be framed; in all there are 12 witnesses, the trial is likely to take a

considerable time, 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 the 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.

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. 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.
8. The petitioner shall deposit his passport, if any, with the Trial Court forthwith and in case, he does not have the passport, he shall furnish a specific affidavit in this regard.

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.

In view of the above, this Court makes it clarified 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.

April 11, 2023

S.Sharma(syr)

Whether speaking/reasoned

Whether reportable

:

:

Yes/No

Yes/No

(AMAN CHAUDHARY)
JUDGE