

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-5771-2021

Date of Decision: 30.5.2023

Sanjay Kumar

....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. G.S.Sandhu, Advocate, for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

KARAMJIT SINGH, J.

Prayer in the present petition under Section 439 of Code of Criminal Procedure is for grant of regular bail to the petitioner in case FIR No.553 dated 18.8.2020 registered for the offences punishable under Sections 21 of NDPS Act at Police Station Shivaji Colony, Rohtak, District Rohtak.

2. The allegations in nutshell are that the police received secret information and then one Swift Dazire No.PB13-BJ-1906 and one another Creta Car No.UP26-X-8454 were seen parked and the police officials apprehended the persons who were sitting in Creta car and they disclosed their names Kishan Gupta, Sanjiv Kumar and petitioner-Sanjay and the lady who was sitting on the rear seat disclosed her name as Nihali @ Nihal Kaur and then search was conducted in the presence of DSP Mahesh Kumar and currency notes worth ₹ 50,000/- and one polythene bag containing 100 grams of smack were recovered from Sanjiv Kumar. From Kishan Gupta, the police recovered 100 grams of smack and currency notes worth ₹

recovered from petitioner-Sanjay and another bag containing 600 grams of smack was recovered from Nihali @ Nihal Kaur.

3. Counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case and that the petitioner is having no other criminal history under NDPS Act and is incarcerated for the last more than 2 years and 9 months and that the trial is yet to commence as till date, no prosecution witness is examined. He further submits that it will take considerable time for the trial to conclude. So, prayer is made that the petitioner be granted regular bail. In support of his contentions, counsel for the petitioner has relied upon the order of the Hon'ble Supreme Court in **SLP(Crl.) 6690 of 2022 (Dheeraj Kumar Shukla v. State of U.P.,** decided on 25.01.2023), wherein bail has been granted to the accused in a case pertaining to recovery of commercial quantity of contraband on account of his long incarceration of about 02 years and 06 months. Counsel for the petitioner has also referred to **SLP(Crl.) 5769 of 2022 (Nitish Adhikary @ Bapan v. State of West Bengal,** decided on 01.08.2022) wherein the accused was granted bail in a case relating to recovery of commercial quantity of contraband after he had undergone custody for a period of 01 year and 07 months. Counsel for the petitioner has also placed reliance upon order dated 16.02.2023 in CRM-M-24168 of 2022 (**Mandeep Singh v. State of Punjab**), wherein the Co-ordinate Bench of this Court granted bail to the accused involved in a case relating to commercial quantity of contraband on the ground that he has been incarcerated for about 02 years and 08 months.

4. Present petition is opposed by the State counsel who submits that in the present case, commercial quantity of contraband was recovered

from the petitioner and that the trial is going on. However, the State counsel has not disputed the fact that the petitioner is in custody for the last more than 2 years and 9 months and is not facing any other criminal case under NDPS Act. State counsel further apprised the Court that till date, the prosecution has failed to examine any witness and in total, the prosecution has to examine 16 witnesses.

5. I have considered the submissions made by the counsel for the parties.

6. As per record, 600 grams of smack was recovered from the possession of the petitioner who was arrested in this case on 18.8.2020 and is not involved in any other criminal case under NDPS Act. It will take considerable time for conclusion of trial as till date, no witness has been examined on behalf of the prosecution out of total 16 witnesses.

7. In the circumstances as detailed above, the petitioner is able to make out his case within the scope of Article 21 of the Constitution of India which confers right of speedy trial. In view of long custody, sufficient mitigating circumstances are made out for grant of bail to the petitioner even in the face of embargo provided under Section 37 of NDPS Act.

8. In view of the above, without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

(KARAMJIT SINGH)
JUDGE

May 30, 2023
Paritosh Kumar