

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

209

CRM-M-7592-2022 (O&M)

Date of decision: 24.07.2023

Pavitar Singh Alias Makhan

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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

Mr. Manipal Singh Atwal, DAG Punjab

AMAN CHAUDHARY, J.

1. This is the 2nd petition filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in case FIR No.484 dated 12.12.2020, registered under Sections 22 and 25 NDPS Act at Police Station City Barnala, District Barnala.

2. Learned counsel contends that the first petition for grant of regular bail was withdrawn way back on 17.11.2021. The custody of the petitioner is now 2 years and more than 7 months. The alleged recovery falling within the category of commercial quantity as per the schedule of the NDPS was effected from a transparent bag. The petitioner has been falsely implicated. No independent witness was joined in the case. There is non-compliance of Section 50 of the NDPS Act. Out of 12 PWs only 8 have been examined. The petitioner is involved in 1 more case under the NDPS Act, however, he is on bail. 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 23.07.2023 filed by learned State counsel is taken on record. As per the same, the petitioner is behind bars for 2 years, 7 months and 8 days.

4. Learned State counsel opposes the bail on the ground that the petitioner was apprehended at the spot and commercial quantity of contraband was recovered from him. He is however unable to controvert the submissions regarding the stage of the case and petitioner being on bail in other case.

5. Heard.

6. Hon'ble The Supreme Court of India 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 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 under Article 21 of the Constitution of India.

8. Considering the facts and circumstances of the case and, in particular that the petitioner is in custody for 2 years 7 months and 8 days; he is on bail in other FIR; only 8 out of 12 PWs have yet been 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 the NDPS Act can be diluted bearing in mind the right to a speedy trial, as such 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 him 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 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.

(AMAN CHAUDHARY)
JUDGE

24.07.2023
S.Sharma(syr)

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No