

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-7951-2023

Date of Decision: 22.12.2023

Ritesh Sharma

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Arshdeep Singh Brar, Advocate for
Mr. Davinderbir Singh, Advocate,
for the petitioner.

Mr. Vinay Kumar Gupta, AAG, Punjab

KARAMJIT SINGH, J.

Prayer in the present 2nd petition under Section 439 of Code of Criminal Procedure is for grant of regular bail to the petitioner in case FIR No.16 dated 29.1.2020 registered for the offences punishable under Sections 21 of NDPS Act at Police Station Payal, District Khanna.

2. The brief facts of the case are that on 29.1.2020 police received secret information against co-accused Gurdeep Singh and the petitioner and thereafter both of them were arrested and recovery 2.100 kilograms of heroin and drug money worth ₹ 8,85,000/- were recovered from car No.HR-38U-6069, in which both the accused were travelling.

3. Counsel for the petitioner, inter alia, contends that the petitioner is falsely implicated in the present case and that the petitioner is in custody for the last more than 3 years and 10 months and is having no criminal history and similarly situated co-accused Gurdeep Singh is already

granted regular bail by this Court vide order dated 16.11.2023; that the trial

is not proceeding ahead as the further proceedings in the trial are stayed by this Court vide order dated 23.9.2022 in CRR-1969-2022 filed by co-accused Ritesh Sharma; that it will take considerable time for the trial to conclude. So prayer is made that the petitioner be released on bail. The counsel for the petitioner has placed reliance on **Hasanujjaman & Ors. v. The State of West Bengal**, SLP (Crl.) No. 3221 of 2023, decided on 04.05.2023, wherein also in case of commercial quantity of contraband, the accused has been granted bail on account of the fact that he was in custody for more than 1 year and 4 months.

4. Present petition is resisted by the State counsel, who submits that commercial quantity of contraband along with drug money were recovered from the petitioner. The State counsel further submits that the rigors of Section 37 of the Act are applicable to the present case. However, the State counsel has not disputed the fact that the petitioner having no criminal history is in custody for the last 3 years and 10 months and that the further proceedings before the trial Court are stayed by this Court vide order dated 23.9.2022.

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

6. As per case of the prosecution, recovery of commercial quantity of contraband and drug money was effected from the petitioner and his co-accused. Admittedly, co-accused Gurdeep Singh is enlarged on bail by this Court vide order dated 16.11.2023 having CRM-M-36988-2023. As per custody certificate furnished by the State counsel, custody of the petitioner comes out to be more than 3 years and 10 months and the petitioner is having no criminal antecedents. The prosecution examined 6 witnesses out

of total 8 witnesses and thereafter, an application filed by the prosecution under Section 311 of Cr.P.C. to recall 3 PWs for their re-examination was allowed vide order dated 29.8.2022. Said order has been challenged by the present petitioner in this Court by way of revision petition wherein notice of motion has been issued and in the meantime, further proceedings before the trial Court are also stayed. It being so, it will take considerable time for the trial to terminate.

7. Undoubtedly, the petitioner is in custody for the last more than 3 years and 10 months and said incarceration has deprived the petitioner of his personal liberty without ensuring speedy trial and the same is against the mandate as provided under Article 21 of Constitution. In light of the fact that the trial is being delayed, embargo provided under Section 37 of the NDPS Act can be diluted and in the given circumstances, the petitioner can be enlarged on bail keeping in view the right to speedy trial as provided under Article 21 of the Constitution of India and further, co-accused being already granted bail.

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

December 22, 2023

Paritosh Kumar

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No