

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

217

CRM-M-9853-2023 (O&M)

Date of decision: 08.05.2023

Chukwu Ebuka

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Yashpal Thakur, Advocate
for the petitioner

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

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in case of FIR No.62 dated 26.04.2022, registered under Sections 21-C, 61, 85 of NDPS Act, at Police Station Sirhind, District Fatehgarh Sahib, Punjab.

2. Learned counsel contends that the petitioner is in custody for the last 1 year and 5 days. The alleged recovery affected from him is 255 grams of Heroin, which is marginally above the non-commercial quantity. He is not involved in any other case. Out of 11 prosecution witnesses, 4 have been examined. He relies on the orders passed by this Court in **Jaspal Singh @ Judge vs. State of Punjab** in CRM-M-30565-2021 decided on 15.12.2021, **Gurpreet Singh vs. State of Punjab** in CRM-M-45214-2021 decided on 23.03.2022, **Balwinder Singh vs. State of Punjab** in CRM-M-37684-2021 decided on 14.02.2022 and **Mani Garg vs. State of Punjab** in CRM-M-15575-2022 decided on 03.05.2023.

3. The custody certificate dated 05.05.2023 has been filed by learned State counsel. As per the same, the petitioner is behind bars for the last 1 year and 5 days. He opposes the bail on the ground that the commercial quantity of contraband has been recovered from the petitioner and he was apprehended at the spot. He is however unable to controvert the submissions with regard to stage of trial, recovery is marginally higher than the non-commercial quantity and non-involvement of petitioner in any other case.

4. Heard.

5. The Coordinate Bench of this Court in **Gurpreet Singh** (supra) where 255 grams of heroin was recovered, custody was a little over 1 year and there being no criminal antecedents, the petitioner was granted the concession of bail on the aforesaid grounds. In **Balwinder Singh** (supra), the bail was granted to the petitioner while relying on **Jagjit Singh @ Jagga Gill vs. State of Punjab** 2020(2) RCR (Cr.) 612, the alleged recovery effected being 258/260 grams of heroin, the custody was of 1 year and 16 days and while holding that the bar under Section 37 NDPS Act in the case of commercial quantity cannot be termed to be absolute in nature and the departure can be made if the alleged recovery is marginally higher than the commercial quantity. In the case of **Munasi Masih vs. State of Punjab**, CRM-M-31504-2022, decided on 06.02.2023, 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.

6. In view of the afore-referred judgments, facts and circumstances of

the case, in particular that the petitioner is in custody for the last 1 year and 5 days; not involved in any other case; alleged recovery being marginally higher; out of 11 prosecution witnesses only 4 have been examined, 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.

7. 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.

8. 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.

9. In view of the above, it is 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.

(AMAN CHAUDHARY)
JUDGE

May 08, 2023
M.Kamra

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