

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

230

CRM-M-12139-2023 (O&M)
Date of decision: 05.07.2023

Mohammad Minhaj Alam @ Minhaj Alam

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Ruhani Chadha, Advocate for the petitioner

Mr. Dhruv Sihag, AAG Haryana

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 FIR No.104 dated 06.09.2022, registered under Section 18 of NDPS Act, at Police Station Division No.1, District Jalandhar.

2. Learned counsel contends that the petitioner is in custody for the last 10 months. The recovery that has been effected from a polythene bag weighed 2 kg and 600 grams. He is suffering from Bronchitis Asthma and has been referred to a hospital. His son aged 5 years has burnt his both hands in an accident. There is no one else in the family except his wife to look after him. Charges stand framed on 05.04.2023. However, out of 10 prosecution witnesses, none has been examined. He is not involved in any other case. He relies on the orders passed by Co-ordinate Bench of this Court in the case of **Kuldeep Singh vs. State of Punjab** in CRM-M-60474-2022 decided on 11.04.2023, wherein the alleged recovery was 2 kg and 650 grams of opium and the petitioner was enlarged on bail after having a custody of 8 months and 16 days, in **Deepak Kumar alias Babbu**

vs. State of Punjab in CRM-M-63-2023, decided on 16.01.2023, wherein the recovery of 2 kg and 600 grams of opium was effected and the petitioner was enlarged on bail, after having a custody of 8 months, in **Ranjit Singh @ Ranjit Kumar vs. State of Punjab** in CRM-M-57485-2022, decided on 10.01.2023, with the same recovery, was granted bail after 6 months and 10 days of custody. The order of this Court granting bail in the case, wherein recovery of 1 kg and 500 grams of charas, after having a custody of about 1 year, an SLP was preferred wherein Hon'ble The Supreme Court declined to interfere and dismissed the same vide order dated 23.01.2023.

3. The custody certificate dated 04.07.2023 has been filed by learned State counsel, as per which the petitioner is behind bar since 9 months and 29 days.

4. Learned State counsel opposes the bail on the ground that the commercial quantity of contraband has been recovered from the petitioner. He is however unable to controvert the submissions with regard to stage of the case and the petitioner not being involved in any other case.

5. Heard.

6. The Coordinate Bench of this Court in **Ranjit Singh @ Ranjit Kumar** (supra) wherein the same quantity of opium was recovered, custody was 6 months and 10 days and there being no criminal antecedents, the petitioner was granted the concession of bail on the aforesaid grounds and 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.

7. Considering the facts and circumstances of the case, in particular that the petitioner is in custody for the last 10 months; not involved in any other case; charges have been framed on 05.04.2023, however, out of 10 prosecution witnesses, none have yet been examined, the trial is likely to take a considerable time, thus his further incarceration would not serve any useful purpose, thus the present petition for grant of regular bail deserves to be allowed.

8. 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 his 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 not leave the country without prior permission of the trial Court.
9. The trial Court/Duty Magistrate may impose any other condition, as deemed appropriate while releasing the petitioner.
9. 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.
10. 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

July 05, 2023
M.Kamra

Whether speaking/reasoned

:

Yes / No

Whether reportable

:

Yes / No