

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

216

CRM-M-17564-2022

Date of decision: 12.09.2023

Jasbir Singh @ Kala

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Ruhani Chadha, Advocate, for the petitioner.

Mr. Manipal Singh Atwal, DAG, Punjab.

AMAN CHAUDHARY, J.

1. Prayer in the present petition filed under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.127, dated 27.12.2021, registered under Sections 15, 29, 61, 85 of NDPS Act, 1985, at Police Station Talwandi Chaudhrian, District Kapurthala.

2. Learned counsel contends that the petitioner is in custody for 01 year and about 09 months. The petitioner was neither the driver nor owner of the truck, from which the alleged contraband was recovered. He further submits that 103 polythene bags containing poppy husk were allegedly recovered from the secret cavity of the truck, however, they were all emptied on a tarpaulin and thereafter transferred into 25 plastic bags each weighing 15 kgs. and thereafter samples were separated from these bags, thus such samples cannot be considered as representative samples of the contents of aforestated 103 polythene bags, originally stated to have recovered from the body of the truck. He relies upon

judgment in **Amani Fidel Chris vs. Narcotics Control Bureau**, CrI. Appeal No.1027 of 2015, decided on 13.03.2020. Co-accused Surinder Singh has been granted regular bail by this Court vide order dated 03.08.2023 after custody of 01 year and 07 months, who was also a labourer and engaged by the owner of the truck to transport 350 sacks of basmati rice. Further reliance is on order granting bail on the similar ground in **Poonam Devi Rao vs. State of Punjab** passed in CRM-M-32287-2021 on 31.08.2022, against which SLP (CrI) @ Dairy No.5709/2023 filed by the State of Punjab, was dismissed vide order dated 27.02.2023. Charges were framed on 11.05.2023. None out of 13 prosecution witnesses has been examined. In one more case was registered against the petitioner, wherein recovery was less than commercial and he was convicted and sentenced to the period already undergone. In another case, he has been implicated based on disclosure statement, however, no recovery has been effected from him, but he is not on bail. Relies 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 11.09.2023 has been filed by learned State counsel. As per the same, the petitioner is behind bars for 01 year, 08 months and 13 days.

4. Learned State counsel opposes the bail on the ground that the commercial quantity of contraband was recovered from the petitioner, who was apprehended at the spot along with two other co-accused. He is however unable to controvert the submissions with regard to stage of the case and the status of other cases.

5. Heard.

6. Hon'ble The Supreme Court 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. This Court in **Poonam Devi Rao vs. State of Punjab** passed in CRM-M-32287-2021 on 31.08.2022 granted bail to the petitioner after custody of about 1 year and 7 months by taking into consideration the judgment in **Amani Fidel Chris** (supra) and observing that opium recovered from 26 polythene bags from a vehicle that weighed 20 kg. 110 grams was put in a blue colour drum and thereafter, the samples were collected and the mixture was made homogeneous, wherefrom the representative samples were collected, instead of drawing one sample in duplicate from each package/ container in case of seizure of more than one package/container as provided in para no.1.7 of the Standing Order No.1/88 dated 15.03.1988, issued by NCB. Thus, as held in Amani Fidel Chris (supra), the original sanctity of the case property in individual polythene bags was lost. The SLP against the said order was dismissed on 27.02.2023. Hon'ble The Supreme Court 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 a 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. Similarly, in the case of **Shariful Islam @ Sarif vs. The State of West Bengal** SLP (Crl.) No.4173/2022, decided on 04.08.2022, Hon'ble The Supreme Court of India granted bail to the

petitioner in a case of recovery of commercial quantity of contraband, considering incarceration for over 1 year and 6 months and there being no likelihood of completion of trial in the near future. 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 right to speedy trial guaranteed under Article 21 of the Constitution of India and rigors of Section 37 of NDPS Act. This Court in the case of **Balraj Singh vs. State of Punjab** CRM-M-57386-2022, decided on 14.12.2022 has followed the dictum laid down by Hon'ble The Supreme Court of India and granted bail to the petitioner therein after he had undergone total custody of 1 year and 6 months. 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 under Article 21 of the Constitution of India.

8. Keeping in view the aforesaid judgments and facts and circumstances of the case, in particular that the petitioner is in custody for 01 year, 08 months and 13 days; charges were framed on 11.05.2023; out of a total of 13 prosecution witnesses, none has been examined so far; the trial is likely to take a considerable time, thus further incarceration of the petitioners would be violative of their right enshrined under Article 21 of the Constitution of India and the rigors of Section 37 of 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.

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 his 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

12.09.2023

Ankur

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No