

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

219

CRM-M-15402-2023 (O&M)

Date of decision: 25.07.2023

Kulbir Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Nitin Meel, Advocate for the petitioner

Mr. Manipal Singh Atwal, 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 FIR No.143 dated 11.12.2020, registered under Sections 22-C and 25 of NDPS Act, at Police Station Sadar Moga, District Moga.

2. Learned counsel contends that the petitioner is in custody for the last 2 years. He alleges false implication. The recovery allegedly effected from the petitioner is marginally higher than the non-commercial quantity, it being 300 grams of intoxicant powder. Charges have been framed on 13.02.2023, however, out of 25 prosecution witnesses, none have been examined. There is one more case against the petitioner under the NDPS Act involving non-commercial quantity of contraband, wherein he is on bail. He relies on the orders passed by this Court in **Lakhwinder Singh alias Lakha vs. State of Punjab** in CRM-M-12541-2020, decided on 10.08.2020, **Kulwinder Singh @ Kindi vs. State of Punjab** in CRM-

M-25758-2021, decided on 24.01.2022, **Arshdeep Singh vs. State of U.T. Chandigarh** in CRM-M-35429-2020, decided on 09.04.2021 and **Gagandeep vs. State of Punjab** in CRM-M-3055-2021, decided on 27.01.2021.

3. The custody certificate dated 24.07.2023 has been filed by learned State counsel. As per the same, the petitioner is behind bars for the last 2 years and 1 day.

4. Learned State counsel opposes the bail on the ground that the petitioner was apprehended at the spot and commercial quantity of contraband along with Rs.1,45,000/- drug money has been recovered from him. He is however unable to controvert the submissions with regard to stage of the case and the petitioner is on bail in another case.

5. Heard.

6. The Coordinate Bench of this Court in **Balwinder Singh vs. State of Punjab** in CRM-M-37684-2021 decided on 14.02.2022, 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.

7. Considering the afore-referred judgments and the facts of the case, in particular that the petitioner is in custody for the last 2 years and 1 day; is on bail in another case; alleged recovery being marginally above the non-commercial quantity; though the charges stand framed on 13.02.2023, however, out of 25 prosecution witnesses, none has 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 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.

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:-

- (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.

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 25, 2023
M.Kamra

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