

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

216

CRM-M-36716-2022 (O&M)
Date of decision: 17.08.2023

Harwinder Singh @ Butar ...Petitioner

Versus

State of Punjab ...Respondent

CRM-M-16454-2022 (O&M)

Gurtej Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. BS Jatana, Advocate
for the petitioner in CRM-M-36716-2022.

Mr. SS Bhinder, Advocate and
Mr. DS Bhinder, Advocate
for the petitioner in CRM-M-16454-2022.

Mr. HS Sullar, Sr. DAG, Punjab.

AMAN CHAUDHARY, J.

1. Prayer in the present petitions filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioners in FIR No.0007 dated 14.01.2022, registered under Sections 21, 22 of the NDPS Act (Section 27 of NDPS Act added later on), at Police Station City-1 Mansa, District Mansa.
2. Learned counsel contend that the petitioners are in custody for 1 year about 7 months. No independent witness had been joined at the

time of alleged recovery and there was non-compliance of the mandatory provisions of Sections 50 and 57 of the NDPS Act. Challan stands presented, charges were framed on 25.07.2022 but only 4 out of the 11 witnesses have been examined. The petitioners are not involved in any other case under the NDPS Act.

3. The custody certificates dated 14.08.2023 and 16.08.2023, filed by learned State counsel are taken on record, as per which, the petitioners are behind bars for 1 year, 6 months and 29 days and 1 year, 7 months and 1 day respectively.

4. Learned State counsel opposes the bail on the ground that the petitioners were apprehended at the spot and commercial quantity of contraband was recovered from them. He is however unable to controvert the submissions made regarding the stage of the case and petitioners being not involved in any other case under the NDPS Act.

5. Heard.

6. 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 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. 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. 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 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 **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 petitioners are in custody for more than 1 year, 6 months; not involved in any other case under NDPS Act; charges were framed on 25.07.2022 and out of 11 witnesses, only 4 have been examined; 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 petitions for grant of regular bail deserve to be allowed.

8. As a result, the present petitions are allowed. The petitioners are ordered to be released on regular bail, subject to their furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate concerned and subject to their not being required in any other case. The

petitioners shall abide by the following conditions:-

- (i) The petitioners will not tamper with the evidence during the trial.
- (ii) The petitioners will not pressurize/ intimidate the prosecution witnesses.
- (iii) The petitioners will appear before the trial Court on each and every date fixed, unless is exempted by a specific order of Court.
- (iv) The petitioners shall not commit an offence similar to the offence of which, they are an accused, or for commission of which they are suspected of.
- (v) The petitioners 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 petitioners shall not in any manner misuse their liberty.
- (vii) The petitioners shall furnish their addresses and mobile numbers to the Trial Court forthwith and shall not change the same till the conclusion of the trial and in case for any reason, the petitioners 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 petitioners 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 petitioners.

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 petitioners 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.

11. Photocopy of this order be placed on the connected file.

17.08.2023
ashok

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No