

2023:PHHC:141819

**208 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-16435-2023

Date of Decision: 07.11.2023

MOHAMMAND IQBAL

... PETITIONER

VS.

STATE OF PUNJAB

.. RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr. J.S.Sandhu, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, DAG, Punjab.

VIVEK PURI, J.(ORAL)

1. The petitioner is seeking regular bail in the case bearing FIR no. 139 dated 30.06.2021 under Sections 15 (c)/25/29 of the NDPS Act registered at Police Station Canal Colony Bathinda, District Bathinda.

2. Custody certificate has been placed on record.

3. Learned counsel for the petitioner contends that as per the allegations of the prosecution, 10 bags containing 15 kg poppy husk each have been recovered from the truck. The petitioner is neither the owner nor the driver of the vehicle. The allegations against the petitioner are to the effect that he was sitting on the rear portion of the truck. Furthermore, the petitioner is in custody for a period of 02 years, 04 months and 06 days and not involved in any other case. The charge in the instant case has been framed on 22.08.2023 and out of 15, only 01 witness has been examined till date. The charge could not be framed at the earlier instance as the petitioner and the co-accused were not being produced in the Court as they were confined in different jails and there is no lapse on the part of the petitioner which might have resulted in delay in framing of the charge and conclusion of the trial.

4. Learned State counsel submits that out of 15, only 01 witness has been examined.

5. Learned counsel for the petitioner has sought to rely upon the decision of Supreme Court rendered in ***Criminal Appeal No. 668 of 2020***

titled as **Amit Singh Moni Vs. State of Himachal Pradesh**, wherein bail has been granted to the accused in a case pertaining to the recovery of commercial quantity, after he had completed more than 02 years and 07 months of actual custody. Furthermore, it has been argued that in SLP CrI. No. 5769 of 2022 titled as Nitish Adhikary @ Bapan Versus The State of West Bengal, decided on 01.08.2022 by the Hon'ble Supreme Court of India, the accused was granted bail in a case pertaining to recovery of commercial quantity after he had undergone custody for 01 year and 07 months and trial was at a preliminary stage, as only 1 witness has been examined and the accused was not having criminal antecedents. Besides, the decision rendered in SLP CrI. No. 4173 of 2022 decide on 04.08.2022 titled as Shareef Shariful Islam @ Sarif Versus The State of West Bengal, the accused was granted bail after he had suffered incarceration for a period of 01 year and 06 months and there being no likelihood of completion of trial in future. Furthermore, the decision in SLP Criminal No.6690-2022, it has been held that in the absence of criminal antecedents and long incarceration, the condition under Section 37 of NDPS Act can be dispensed with and moreso, when the trial is not progressing.

6. In the instant case, the petitioner is in custody for a period of 02 years, 04 months and 06 days and not involved in any other case. Out of 15, only 01 witness has been examined and the conclusion of trial is likely to take sometime. The speedy trial is a constitutional right provided to an accused under Article 21 of the Constitution of India. As such, sufficient mitigating circumstances are made out and ends of justice will meet, if the petitioner is extended the concession of bail.

7. Without expressing any opinion on the merits of the case, the instant petition is allowed. The petitioner is ordered to be released on bail on his furnishing requisite bail bonds to the satisfaction of the learned trial Court/Duty Magistrate/CJM concerned.

8. The petition is allowed.

07.11.2023
smriti

(VIVEK PURI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No