

CRM-M-19632-2023

2023:PHHC:102978

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-19632-2023

Date of decision: 09.08.2023

Akusa Jorden

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Tarun Singhal, Advocate
for the petitioner

Mr. H.S. Sullar, Sr. DAG Punjab

AMAN CHAUDHARY. J.

1. Prayer in the present petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No. 119 dated 09.09.2021, registered under Section 21 of NDPS Act at Police Station Sadar Rajpura, District Patiala.

2. Learned counsel contends that the petitioner, who is a Nigerian citizen, aged about 28 years, has been in custody for the last 1 year and 11 months. The alleged recovery affected from her is 700 grams of Heroin. The mandatory provisions of Section 42 of the NDPS Act were not complied with while effecting the recovery. No independent witness was joined at the time of raid. Charges have been framed on 31.03.2022, however, out of 13 prosecution witnesses, only 4 have been examined. She is not involved in any other case. Reference has been made to zimni order dated 13.03.2023, Annexure P-3, to show that the prosecution witnesses namely SI Gurwinder Singh and SI Seema Giri have not appeared and bailable warrants have been issued to procure their presence.

3. The custody certificate dated 08.08.2023, filed by the learned State counsel is taken on record. As per the same, the petitioner is behind bars for the last 1 year 10 months 25 days.

4. Learned State counsel opposes the bail on the ground that the commercial quantity of contraband was recovered from the petitioner who was travelling in a taxi alongwith the driver. However, he is unable to controvert the submissions with regard to stage of the case and the petitioner being not involved in any other case.

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. Similarly, in the case of **Shariful Islam @ Sarif versus 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 **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 and granted the 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 06.2.2023, this Court granted bail to the petitioner 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 1 year, 10 months and 25 days; not involved in any other case; out of 13 prosecution witnesses only 4 have yet been examined, the trial is likely to take a considerable time, further incarceration of the petitioner would be violative of her right enshrined under Article 21 of the Constitution of India and the rigors of Section 37 of the 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 her furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate concerned and subject to her 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, she is an accused, or for commission of which she 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 her liberty.
7. The petitioner shall furnish her 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 deposit her passport, if any, with the Trial Court forthwith and in case, she does not have the passport, she shall furnish a specific affidavit in this regard.
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 above are limited for the purpose of present proceedings and would not be construed as any opinion on the merits of the case and the trial would proceed independently of the aforesaid observations.

(AMAN CHAUDHARY)
JUDGE

09.08.2023

Mehak

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No