

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

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CRM-M-20036-2023 (O&M)
Date of decision: 23.08.2023

Kulwinder Singh @ Kinda

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Karandeep S. Sidhu, 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.01, dated 01.01.2022, registered under Sections 22, 61 and 85 NDPS Act, 1985, at Police Station Dharamkot, District Moga.

2. Learned counsel contends that the petitioner is in custody for 1 year and 07 months. The contraband alleged to have been recovered from the possession of the petitioner was in a transparent polythene bag, which, on seeing the police party, was thrown by him on the ground, while he tried to run away. The mandatory provisions of Section 50 of NDPS Act were not complied with. The recovery of the contraband effected from the petitioner is marginally higher than non-commercial quantity, it being 123.8 grams. He places reliance on a judgment passed by a co-ordinate Bench of this Court in case of **Baljinder Singh @ Binda**

Vs. State of Punjab, CRM-M-25942-2021 decided on 12.11.2021. Charges have been framed, however, only 1 out of 12 PWs has been examined as of date. The petitioner is not involved in any NDPS case.

3. The custody certificate dated 22.08.2023 has been filed by learned State counsel. As per the same, the petitioner is behind bars for 01 year and 07 months.

4. Learned State counsel opposes the bail on the ground that commercial quantity of contraband was recovered from the petitioner who was apprehended at the spot. He is however unable to controvert the submissions with regard to the stage of the trial and the petitioner is not involved in any NDPS case.

5. Heard.

6 Co-ordinate Bench of this Court in case of **Baljinder Singh @ Binda Vs. State of Punjab**, CRM-M-25942-2021 decided on 12.11.2021 granted bail to the accused, observing that “it is improbable that a drug trafficker would carry contrabands in a transparent polythene bag without attempting to conceal the drugs.” Hon’ble The Supreme Court of India 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 had 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 prosecution witnesses 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.

7. Considering the facts and circumstances of the case, in particular that the petitioner is in custody for the last 1 year and 7 months; not involved in any other case under the NDPS Act; charges have been framed, however out of 12 prosecution witnesses only 01 has been examined, the trial is likely to take a considerable time, 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 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., the trial is likely to take a considerable time, thus his further incarceration would not

serve any useful purpose, 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 him 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

23.08.2023

Ankur

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No