

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

219

CRM-M-20078-2023

Date of decision: 02.08.2023

Sunny Masih @ Gulli

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Vipul Jindal, Advocate for the petitioner

Ms. Himani Arora, AAG 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 petitioners in case FIR No.230 dated 13.08.2022, registered under Sections 21(c) and 29 of NDPS Act, at Police Station Civil Lines Batala, District Gurdaspur.

2. Learned counsel contends that the petitioner is in custody for the last about 1 year. The alleged recovery effected from him is marginally above the non-commercial quantity, it being 270 grams of Heroin. The mandatory provisions of Sections 42, 50 and 52 of the NDPS Act were not complied with while effecting the recovery. Charges were framed on 17.02.2023, however, out of 14 prosecution witnesses, none has been examined. The petitioner is involved in two other cases under the NDPS involving quantity of 4 grams and 100 grams of heroin recovered

from the co-accused and has been involved on the basis of disclosure statement, in which he is on bail. No recovery was effected from the petitioner in the said cases. In this regard, he relies on the judgment passed by Hon'ble The Supreme Court titled as **Maulana Mohd. Amir Rashadi vs. State of U.P. and others**, 2012(2) SCC 382. Further reliance is placed on **Karandeep Singh @ Sunny vs. State of Punjab**, CRM-M-9712-2021 decided on 06.09.2021 wherein bail was granted in case of contraband recovered, being marginally higher than commercial quantity and **Simrapal Singh vs. UOI**, CRM-M-10276-2021, decided on 17.09.2021, wherein recovery of 1.5 grams of charas was effected, against which the SLP filed by UOI was dismissed vide order dated 23.01.2023.

3. The custody certificate dated 01.08.2023 has been filed by learned State counsel, as per which, the petitioner is behind bars for 11 months and 19 days.

4. Learned State counsel opposes the bail on the ground that the petitioner was apprehended at the spot and the commercial quantity of contraband has been recovered from him. He is however unable to controvert the submissions in so far as the stage of the case and petitioner being on bail in another case, is concerned.

5. Heard.

6. Hon'ble The Supreme Court of India in the case of Maulana Mohd. Amir Rashadi (Supra) had held that, "As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the

accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court, etc.”

7. The Coordinate Bench of this Court in **Gurpreet Singh vs. State of Punjab** in CRM-M-45214-2021 decided on 23.03.2022, where 255 grams of heroin was recovered, custody was a little over 1 year and there being no criminal antecedents, the petitioner was granted the concession of bail on the aforesaid grounds. In **Karandeep Singh @ Sunny vs. State of Punjab**, CRM-M-9712-2021 decided on 06.09.2021, a case of recovery of 270 and 150 grams of heroin from two accused, being marginally higher than non-commercial quantity bail was granted after about 11 months of custody and similarly in **Simrapal Singh vs. UOI**, CRM-M-10276-2021, decided on 17.09.2021, bail was granted on custody of about 1 year, the recovery of 1.5 grams of charas, being marginally above non-commercial quantity, against which the SLP filed by UOI was dismissed vide order dated 23.01.2023. 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.

8. 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 (CrI.) 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.

9. Considering the facts and circumstances of the case, in particular that the petitioner is in custody for the last 11 months and 19 days; on bail in another case; alleged recovery is marginally above the non-commercial quantity; though the charges stand framed on 17.02.2023, however, none out of the 14 prosecution witnesses, has yet been examined, the trial is likely to take a considerable time, thus further incarceration of the petitioner would be violative of their rights 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.

10. 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 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.

11. 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.

12. 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

02.08.2023
Mehak

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