

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

224

CRM-M-20158-2023

Date of decision: 24.08.2023

Manirka Yadav and another

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Gaurav Sharma, Advocate for the petitioner.

Mr. Baljinder Singh Virk, Sr. DAG, Haryana.

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.75, dated 02.03.2022, Annexure P-1, registered under Sections 20 of NDPS Act, 1985 at Police Station Sector-6, Bahadurgarh, District Jhajjar.

2. Learned counsel contends that the petitioners are in custody for 01 year and about 06 months. The alleged recovery has been effected not from the person but from the alleged bag being carried by them. The mandatory provisions of Section 50 NDPS were not complied with in this case. No independent witness had been joined. Charges were framed on 15.09.2022, however, only 01 prosecution witness out of a total of 15 has been examined. The petitioners are not involved in any other case.

3. The custody certificate dated 23.08.2023 has been filed by learned State counsel. As per the same, the petitioners are behind bars for 01 year, 05 months and 18 days.

4. Learned State counsel opposes the bail on the ground that the petitioners were arrested at the spot alongwith the contraband of commercial quantity. He is however unable to controvert the submissions with regard to stage of the case and the petitioners are not involved in any other case.

5. Heard.

6. 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 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 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 under 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 01 year, 05 months and 18 days; not involved in any other case; charges were framed on 15.09.2022; out of a total of 15 prosecution witnesses, only 01 has 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 petition for grant of regular bail deserves to be allowed.

8. As a result, the present petition is 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 them 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 are 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 his liberty.
- (vii) The petitioners shall furnish their 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 petitioners seek 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.

(AMAN CHAUDHARY)
JUDGE

24.08.2023

Ankur

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No