

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

229

CRM-M-21745-2023 (O&M)
Date of decision: 18.08.2023

Balwinder Singh @ Ghaint

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Amandeep Singh Saini, 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 petitioner in FIR No.238 dated 03.11.2022, registered under Sections 21 and 29 of NDPS Act, 1985 at Police Station City Moga, District Moga.

2. Learned counsel contends that the petitioner is in custody for about 10 months. The alleged recovery effected from the vehicle in which the petitioner along with other co-accused were travelling, was of 250 gms. heroin and cannot be termed to be in conscious possession thereof. Even otherwise, there were other co-passengers in the vehicle. Co-accused Baljinder Singh @ Jindri and Amarjit Singh have been granted regular bail vide orders dated 14.03.2023 and 15.03.2023, Annexures P2 and P3, passed by this Court. Charges were framed on 31.05.2023 and none out of 26 witnesses has been examined. He is involved in two more cases, in which the non-commercial quantity of

contraband was recovered and he is on bail in these cases. Reliance is placed on the judgment of Hon'ble The Supreme Court in **Maulana Mohd. Amir Rashadi vs. State of U.P. and others**, 2012(2) SCC 382.

3. The custody certificate dated 17.08.2023, filed by learned State counsel is taken on record, as per which, the petitioner is behind bars for 9 months and 15 days.

4. Learned State counsel opposes the bail on the ground that the petitioner is apprehended at the spot and commercial quantity of contraband was recovered from him. She is however unable to controvert the submissions made regarding the stage of the case, petitioner being on bail in other cases and co-accused have been granted regular bail.

5. Heard.

6. Hon'ble The Supreme Court 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." Reiterating in **Prabhakar Tewari vs. State of UP and another**, (2020) 11 SCC 648, it was observed that, "The offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail."

7. This Court granted bail in **Satnam Singh @ Satta vs. State of Punjab**, CRM-M-23809-2022, dated 17.05.2023, wherein the recovery

was marginally higher than the non-commercial quantity, the accused being behind bars for the last more than 10 months and there was no case pending against him; in **Jaspal Singh @ Pala vs. State of Punjab**, CRM-M-45239-2019, decided on 25.02.2020, the alleged recovery was of 275 grams of heroin; in **Tajinder Singh vs. State of Punjab**, CRM-M-8212-2022, alleged recovery was of 270 grams of heroin and the accused was behind bars since 7 months and **Ladwinder Singh @ Laddi vs. State of Punjab**, CRM-M-44383-2022, wherein the recovery was of 2kgs. 700 grams of opium and the accused remain in custody for 9 months. Hon'ble The Supreme Court vide order dated 23.01.2023, dismissed the SLP (Crl.) No.18957 of 2022 in **Union of India vs. Simranpal Singh**, a case where the High Court had granted bail to the petitioner, who had remained in custody for about one year and the recovery effected from him was of 1.5 kg charas.

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 (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. 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

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.

9. Considering the facts and circumstances of the case, in particular that the petitioner is in custody for last 9 months and 15 days; on bail in other cases; co-accused have been granted regular bail; charges were framed on 31.05.2023 but out of 26 prosecution witnesses, none has been examined so far; the trial is likely to take a considerable time, thus 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 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 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.

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.

18.08.2023
ashok

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No