

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

218

CRM-M-22547-2023
Date of decision: 10.05.2023

Aisha Khatun Dass

....Petitioner

Versus

State of Punjab

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Rishav Jain and Mr. Kanish Jindal, Advocates
for the petitioner
Mr. H. S. Sullar, Sr. DAG, Punjab.

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in case of FIR No. 76 dated 28.07.2021, registered under Sections 20 and 61 of the NDPS Act at Police Station Ghanaur, District Patiala.
2. Learned counsel contends that the petitioner has been in custody for the last about 1 year 9 months, having been arrested on 30.07.2021. She has been falsely implicated in the present case. The alleged recovery effected from her alongwith co-accused Bali Ram Thakur was 5 kgs. of charas each. The abovesaid co-accused has already been granted regular bail vide order dated 24.03.2023, Annexure P-4. Though, charges were framed on 07.10.2021, however, only 2 out of 11 prosecution witnesses have been examined. She is not involved in any other

case.

3. The custody certificate dated 09.05.2023 filed by the learned State counsel is taken on record. As per the same, the petitioner is behind bars for the last 1 year 9 months 13 days.

4. Learned State counsel opposes the bail on the ground that the contraband was recovered from the conscious possession of the petitioner as well as her co-accused and is commercial. However, he is unable to controvert the submissions with regard to the stage of the case, co-accused having been granted bail and the petitioner being 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 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 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 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 Article 21 of the Constitution of India.

7. In view of the afore-referred judgments, facts and circumstances of the case and, in particular that the petitioner is in custody for the last 1 year 9 months and 13 days; she is not involved in any other case; co-accused has already been granted bail; charges have been framed but out of 11 prosecution witnesses only 2 have 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 clear that in case of any infraction of any 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

10.05.2023

Mehak

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