

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-24975-2023
Date of decision: 22.05.2023

Kulwinder Singh

....Petitioner

Versus

State of Punjab

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. G. S. Sandhu, Advocate
for the petitioner

Mr. M. S. Nagra, AAG, 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 FIR No. 52 dated 27.06.2022, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Sadar Abohar, District Fazilka.

2. Learned counsel contends that the petitioner has been in custody for the last about 11 months having been arrested on 27.06.2022. The alleged recovery of 800 tablets weighing 51.21 gms., being marginally above the non-commercial quantity of 50 gms. was effected from the dashboard of the truck, of which the petitioner was a cleaner. He is not involved in any other case. Co-accused Bhupinder Singh, owner and driver of the truck has been granted regular bail vide order dated 29.03.2023 after being in custody for 9 months and 1 day. Though, challan has been presented on 07.12.2022, however, charges are yet to be framed and in all, there are 17 prosecution witnesses. He relies on the judgment

passed by this Court in CRM-M-5063-2023 titled as **Baldev Singh vs. State of Punjab** dated 16.05.2023, CRM-M-57151-2022 titled as **Ravinder Singh vs. State of Punjab** dated 09.02.2023, CRM-M-3055-2021 titled as **Gagandeep vs. State of Punjab** dated 27.01.2021 and CRM-M-63-2023 titled as **Deepak Kumar @ Babbu vs. State of Punjab**.

3. The custody certificate dated 18.05.2023 has been filed by learned State counsel. As per the same, petitioner is behind bars for the last 10 months and 23 days.

4. Learned State counsel opposes the bail on the ground that the petitioner was the cleaner of the truck arrested on the spot from which commercial quantity of the contraband was recovered. However, he is unable to controvert the submissions with regard to stage of the case, the petitioner not being involved in any other case under the NDPS Act and the co-accused having been granted regular bail.

5. Heard.

6. The co-ordinate Bench of this Court in **Baldev Singh** (supra), in a case where the recovery was 259 grams of Tramadol Hydrochloride tablets granted concession of regular bail to the petitioner who was in custody for 5 months. In **Ravinder Singh** (supra), the petitioner was granted bail wherein recovery was marginally above the non commercial quantity and his custody was 6 months. In the case of **Gagandeep** (supra), the recovery was 650 tablets of Tramadol being marginally higher than the non-commercial quantity and the petitioner with a custody of 8 months was granted bail. Further in the case of **Deepak Kumar @ Babbu** (supra), the bail was granted, the recovery being of 2 kg 600 gms of opium considering it marginally above the non-commercial

quantity and custody of the petitioner having been 8 months. In the case of **Jaspal Singh @ Pala vs. State of Punjab**, 2021(3) RCR (CrI.) 145, this Court granted bail, after a custody of almost 11 months, where 275 grams of heroin was recovered in a polythene bag and no memo was presented to show the weight, length and breadth of the bag. The difference of 25 grams was held to be debatable. In CRM-M-45214-2021 titled as **Gurpreet Singh vs. State of Punjab** dated 23.03.2022, bail was granted as the contraband was marginally higher than the non-commercial quantity that included the weight of the polythene bag.

7. The alleged recovery in the present case being 51.21 grams including the polythene bag is debatable, whether the same will fall within commercial or non-commercial quantity.

8. In view of the afore referred orders, facts and circumstances of the case, particularly that the petitioner has been in custody for the last 10 months and 23 days; is not involved in any other case under the NDPS Act; challan has been presented, however, charges are yet to be framed and in all, there are 17 prosecution witnesses, 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.

9. 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:-

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, he is an accused, or for commission of which he 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 his liberty.
7. 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.
8. The petitioner shall deposit his passport, if any, with the Trial Court forthwith and in case, he does not have the passport, he shall furnish a specific affidavit in this regard.
10. 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.
11. 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

22.05.2023

Mehak

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No