

CRM-M-29104-2021 (O&M)
CRM-M-35502-2021 (O&M)

N.C. No.2023:PHHC:097546

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

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CRM-M-29104-2021 (O&M)
Date of decision: 31.07.2023

Kuldeep Singh

...Petitioner

Versus

State of Punjab

...Respondent

CRM-M-35502-2021 (O&M)

Amandeep Singh Alias Amna

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Manish Kumar Singla, Advocate
for the petitioner in CRM-M-29104-2021

Mr. Rubal Garg, Advocate
for the petitioner in CRM-M-35502-2021

Mr. Manipal Singh Atwal, DAG Punjab

AMAN CHAUDHARY. J.

1. The aforesaid petitions shall be decided together as they arise out of the same FIR.
2. Prayer in the present petitions filed under Section 439 Cr.P.C. is for the grant of regular bail to the petitioners in case FIR No.85 dated 02.11.2020, registered under Section 22 of the NDPS Act, at Police Station Sadiq, District Faridkot.
3. Learned counsel contend that the petitioners have been in custody for the last about about 2 years and 9 months. They have been falsely implicated in

the case. The mandatory provisions of Sections 42 and 50 of the NDPS Act have not been complied with while effecting recovery. They are not involved in any other case. Challan stands presented on 30.04.2021, however, charges are yet to be framed. There are a total of 21 witnesses.

4. The custody certificates dated 28.07.2023, filed by learned State counsel are taken on record. As per the same, the petitioners are behind bars for 2 years, 8 months and 23 days.

5. Learned State counsel opposes the bail on the ground that petitioners were arrested at the spot and recovery of commercial quantity of contraband was effected from them. He is however unable to controvert the submissions regarding the stage of the case and petitioners being not involved in any other case.

6. Heard.

7. 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. 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 the 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. 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 under Article 21 of the Constitution of India.

8. Considering the facts and circumstances of the case and, in particular that the petitioners are in custody for 2 years, 8 months and 23 days; not involved in any other case; though challan was presented way back on 30.04.2021, however, charges have not been framed; in all there are 21 witnesses; the trial is likely to take a considerable time, further incarceration of the petitioners 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 petitions for grant of regular bail deserve to be allowed.

9. As a result, the present petitions are 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 they 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 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 their 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.

10. 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.

11. 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.

12. A photocopy of this order be placed on the file of connected case.

(AMAN CHAUDHARY)
JUDGE

31.07.2023

S.Sharma(syr)

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