

2023:PHHC:137356
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-28652-2023
DECIDED ON: 20.10.2023

VISHU BHUSHANPETITIONER

VERSUS

STATE OF PUNJABRESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Jashandeep Singh Sandhu, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked for the second time under Section 439 Cr.P.C., seeking regular bail to the petitioner in FIR No.59, dated 17.09.2021, under Section 22 of NDPS Act, 1985, registered at Police Station Amir Khas, District Fazilka, Punjab.

The contents of the FIR read as under:

“Today I ASI alongwith Sr. Constable Rattan Singh 1292/Fazilka, PHG Manga Ram 5378, PHG Balvir Chand 6460 on private vehicle driven by me ASI, regarding patrolling and checking of suspicious persons were going towards villages Mahumajoyian, Billimar, Rehmeshah Bodla, Malkjada etc., when police party reached near bus stand Mahumajoyian, then informer got the vehicle stopped and came to me and information that Vishu Bhushan gave son of Satpal resident of Mohalla Jattanwala Zira District Ferozepur do the work of selling intoxicant tablets and today also he in his vehicle No. HR-26-CA9269 mark Artiga Maruti Suzuki colour grey silver is getting intoxicant tablets in his vehicle from Ferozepur and is going towards Jalalabad side, if naka bandi is laid now at GT road bus stand Rehmeshah Bodla, then from the vehicle huge quantity of intoxicant can be recovered and he can be apprehended red hand, that information is trustworthy and

credible, Vishu Bhushan son of Satpal Singh above said by keeping in his possession intoxicant tablets has committed offence under section 22/61/85 of NDPS Act, therefore ruqa against Vishu Bhushan above said is written and is sent by hand Sr. Constable Rattan Singh 1292/FZK to police station for registration of case, special PCR/FZK reports be issued and be informed and for further investigation of the case other investigating officer be sent at the spot, I ASI alongwith accompanying officials am going to lay naka bandi at the place told by the informer SD/- ASI Mohinder Singh 653/Fazilka police station Amir Khas date 17.09.2021 in the area Mahumojoyian at 6.50 PM.”

2. Earlier the petition was dismissed on merits, considering the period of custody i.e., 1 year and 4 months on that date and the case law in ***Narcotics Control Bureau vs. Mohit Aggarwal, Crl Nos. 1001-1002 decided on 19.07.2022*** recording that there is reasonable material, which is credible and plausible evidence on record to prove the guilt of the petitioner and considering the sensitivity of the offence i.e., drug trafficking.

3. Today, second petition has been preferred primarily bringing on record that custody of the petitioner is now 2 years and 1 month, as is corroborated by the custody certificate produced by Mr. Rajiv Verma, DAG Punjab. Apart from the fact that after the framing of charges on 18.01.2022, out of total 14 prosecution witnesses only 4 have been examined so far and that too are formal witnesses, meaning thereby trial will in all probability take long time. Though, it is a hard case, once the earlier petition stands dismissed on merits with stern observations particularly considering the sensitivity involved in the offence, but since then the petitioner has suffered another 9 months in custody making it a total of 2 years 1 month added with fact that he is not involved in any other case of any nature whatsoever, as is evident from the perusal of the custody certificate, demonstrating that he is a person of clean antecedents and therefore, being a first time offender

needs a liberal consideration by this Court at this stage.

4. It is incumbent on this Court as well for administration of justice that first time offenders at least be given a chance to join back in the main stream to rectify their mistakes as well as weighing with the principle that 'bail is a rule and jail is an exception'.

5. It is also to be borne in mind that keeping the petitioner behind the bars for an indefinite period would also violate the principle of right to speedy trial and expeditious disposal under Article 21 of Constitution of India, as has been time and again discussed by this Court, while relying the judgment of the Apex Court passed in *Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131.*

4. In view of the aforesaid circumstances and discussion made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

5. The present petition is hereby allowed.

6. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

(SANDEEP MOUDGIL)
JUDGE

20.10.2023

Meenu

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>