

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

228

CRM-M-32014-2023
Date of decision: 12.07.2023

Amarjit Singh

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Ms. Himani Anand, Advocate
for the petitioner

Mr. Dhruv Sihag, AAG, Haryana

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. 37 dated 18.01.2022, registered under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Section 29 and 27-A of the NDPS Act added late on) at Police Station Sadar Thanesar, District Kurukshetra.

2. Learned counsel contends that petitioner has been in custody for the last about 1 year 6 months. No independent witness was joined and there is an unexplained delay of 12 days in sending the sample to the FSL. Co-accused has been granted bail after having a custody of over 1 year 2 months, vide order dated 27.03.2023, Annexure P-4. The petitioner is not involved in any other case. Charges have been framed on 10.01.2023, however, none out of 19 PWs has been examined.

3. The custody certificate dated 11.07.2023 filed by the learned State counsel is taken on record. As per the same, the petitioner is behind bars for the last 1 year 5 months and 14 days.

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

5. Heard.

6. 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. Similarly, in the case of **Shariful Islam @ Sarif versus 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 **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 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 the petitioner 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. Considering the facts and circumstances of the case, in particular that the petitioner has been in custody since last 1 year 5 months and 14 days; is not involved in any other case; co-accused has already been enlarged on bail; charges have been framed but out of 19 PWs, none have yet been examined; the trial is likely to take 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, as such 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 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.

9. It is made clear that in case of any infraction 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 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.

(AMAN CHAUDHARY)
JUDGE

12.07.2023

Mehak

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