

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

231

CRM-M-32029-2023 (O&M)

Date of decision: 18.08.2023

Gagandeep

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Gurmohan Singh Bedi, Advocate
for the petitioner.

Ms. Himani Arora, AAG, Punjab.

AMAN CHAUDHARY, J.

1. Prayer in the present petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in FIR No.230 dated 13.08.2022, registered under Sections 22(c) and 29 of NDPS Act, at Police Station Civil Lines Batala, District Batala.

2. Learned counsel contends that the petitioner is in custody for last about 1 year. The alleged recovery effected from him is marginally above the non-commercial quantity, it being 260 grams of Heroin. The mandatory provisions of Sections 42, 50 and 52 of the NDPS Act were not complied with while effecting the recovery. Co-accused Sunny Masih @ Gulli has already been granted regular bail by this Court vide order dated 02.08.2023, from whom the recovery effected was of 270 grams heroin and had two more cases against him. Charges were framed on 17.02.2023, however, out of 14 prosecution witnesses, only one has been examined. The petitioner is involved in 5 more cases on disclosure

statement but no recovery has been effected from him though recovery from other co-accused was effected, which were of non-commercial quantity of contraband, it being 54 gm, 35 gm, 100 gm, 260 gm and 10 gm, respectively, and he is on bail in all these cases. In this regard, he relies on the judgment passed by Hon'ble The Supreme Court titled as **Maulana Mohd. Amir Rashadi vs. State of U.P. and others**, 2012(2) SCC 382. Further reliance is placed on **Karandeep Singh @ Sunny vs. State of Punjab**, CRM-M-9712-2021 decided on 06.09.2021 wherein bail was granted in case of contraband recovered, being marginally higher than non-commercial quantity.

3. The custody certificate dated 17.08.2023, filed by learned State counsel is taken on record, as per which, the petitioner is behind bars for the last 1 year.

4. Learned State counsel opposes the bail on the ground the petitioner was apprehended at the spot and commercial quantity of contraband was recovered from him. She is however unable to controvert the submissions made regarding the stage of the case, co-accused has been granted bail and petitioner being on bail in other cases.

5. Heard.

6. This Court granted bail in **Satnam Singh @ Satta vs. State of Punjab**, CRM-M-23809-2022, dated 17.05.2023, wherein the recovery was marginally higher than the non-commercial quantity, the accused being behind bars for the last more than 10 months; in **Jaspal Singh @ Pala vs. State of Punjab**, CRM-M-45239-2019, decided on 25.02.2020, the alleged recovery was of 275 grams heroin; in **Tajinder Singh vs. State of Punjab**, CRM-M-8212-2022, alleged recovery was of 270 grams

of heroin and the accused was behind bars since 7 months and **Ladwinder Singh @ Laddi vs. State of Punjab**, CRM-M-44383-2022, wherein the recovery was of 2kgs. 700 grams opium and the accused remain in custody for 9 months. Hon'ble The Supreme Court vide order dated 23.01.2023, dismissed the SLP (Crl.) No.18957 of 2022 in **Union of India vs. Simranpal Singh**, a case where the High Court had granted bail to the petitioner, who had remained in custody for about one year and the recovery effected from him was of 1.5 kg charas.

7. 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. 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. In the case of **Munasi Masih vs. State of Punjab**, CRM-M-31504-2022, decided on 06.02.2023, 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.

8. Considering the facts and circumstances of the case, in

particular that the petitioner is in custody for a year; on bail in other cases; co-accused has been granted bail; alleged recovery is marginally above the non-commercial quantity; charges were framed on 17.05.2023 and out of 14 prosecution witnesses, only one has yet been examined; the trial is likely to take a considerable time, thus 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 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:-

- (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.

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 petitioner 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.

18.08.2023
ashok

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No