

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

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CRM-M-35092-2023 (O&M)

Date of decision: 26.07.2023

Mohd. Kabir Ahmed

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Munish Behl, Advocate for the petitioner.

Mr. Baljinder Singh Virk, Sr. DAG, Haryana.

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.213 dated 09.09.2020, registered under Sections 170, 419, 420, 467, 468, 471 IPC and Sections 25-54-59 of Arms Act (Section 21C of NDPS Act added later on), at Police Station Sarai Khawaja, District Faridabad.
2. Learned counsel contends that the petitioner is in custody for the last about 2 years and 10 months. Initially the FIR was registered under the offence of IPC, however, subsequently, Section 21C of NDPS Act was added after 8 days on the account of recovery of tramadol capsule without indicating any quantity thereof, which allegedly was in pursuance of the disclosure statement of the petitioner and his co-accused. Co-accused Abang Mehtab @ Md. Mehtab, who had been in custody for 2 years and 4 months was granted concession of bail by this Court vide order dated 10.02.2023 (Annexure P8). Another co-accused Aribam

Gunanda was also granted bail by the trial Court. Only 6 out of 21 witnesses have been examined. He is not involved in any other case.

3. The custody certificate dated 25.07.2023, filed by learned State counsel is taken on record. As per the same, the petitioner is behind bars for 2 years, 10 months and 4 days.

4. Learned State counsel opposes the bail on the ground that heavy quantity of tramadol was recovered on the disclosure statements of the petitioner as well as his co-accused. Further, fake IDs and Aadhar Card were recovered from the co-accused and a country made pistol and 4 live cartridges were recovered from the petitioner. He is however unable to controvert the submissions made regarding the custody, stage of the trial, the petitioner not being involved in any other case and co-accused having been granted bail.

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 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 **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. 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 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.

7. Considering the facts and circumstances of the case, in particular that the petitioner is in custody for the last 2 years, 10 months and 4 days; not involved in any other case; only 6 out of 21 witnesses have yet been examined; co-accused have been granted bail, the trial is likely to take a considerable time, thus his further incarceration would not serve any useful purpose, 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 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.

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.

26.07.2023
ashok

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No