

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

227

CRM-M-36073-2023

Date of decision: 01.08.2023

Lovepreet Singh and another

....Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. J. S. Sandhu, Advocate for the petitioners

Mr. H.S. Sullar, Sr. DAG 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 petitioners in case FIR No.103 dated 09.08.2022, registered under Section 21 of NDPS Act, at Police Station Kulgarhi, District Ferozepur.

2. Learned counsel contends that the petitioners are in custody for about 1 year. The alleged recovery effected from them is marginally above the non-commercial quantity, it being 270 grams of Heroin. The mandatory provisions of Sections 42, 50 and 52 of the NDPS Act were not complied with while effecting the recovery, which is even otherwise, from a transparent plastic bag, stated to be lying on the ground. Thus, not from the conscious possession of the petitioners.

Charges were framed on 16.02.2023, however, out of 10 prosecution witnesses, none has been examined. The petitioners are not involved in any other case. Reliance is placed on **Sarabjeet Singh @ Sarbi vs. State of Punjab**, CRM-M-718-2023, decided on 24.03.2023, **Gursant Singh @ Santu vs. State of Punjab**, CRM-M-37944-2020, decided on 07.09.2021, as regards recovery from transparent polythene bag is concerned, whereas for grant of bail in case of contraband recovered, being marginally higher than commercial quantity on **Karandeep Singh @ Sunny vs. State of Punjab**, CRM-M-9712-2021 decided on 06.09.2021 and **Simrapal Singh vs. UOI**, CRM-M-10276-2021, decided on 17.09.2021, wherein recovery of 1.5 grams of charas was effected, against which the SLP filed by UOI was dismissed vide order dated 23.01.2023.

3. The custody certificates dated 31.07.2023 have been filed by learned State counsel, as per which, the petitioners are behind bars for 11 months and 23 days.

4. Learned State counsel opposes the bail on the ground that the petitioners were apprehended at the spot and the commercial quantity of contraband has been recovered from them. He is however unable to controvert the submissions in so far as the stage of the case and petitioners not being involved in any other case is concerned.

5. Heard.

6. The Coordinate Bench of this Court in **Gurpreet Singh vs. State of Punjab** in CRM-M-45214-2021 decided on 23.03.2022, where 255 grams of heroin was recovered, custody was a little over 1 year and there being no criminal

antecedents, the petitioner was granted the concession of bail on the aforesaid grounds. In **Sarabjeet Singh @ Sarbi vs. State of Punjab**, CRM-M-718-2023, decided on 24.03.2023, **Gursant Singh @ Santu vs. State of Punjab**, CRM-M-37944-2020, decided on 07.09.2021, the recovery, as in the present case, was effected from a transparent polythene bag and custody was 1 year 8 days and 1 year 3 months respectively, wherein bail was granted. In **Karandeep Singh @ Sunny vs. State of Punjab**, CRM-M-9712-2021 decided on 06.09.2021, a case of recovery of 270 and 150 grams of heroin from two accused, being marginally higher than non-commercial quantity bail was granted after about 11 months of custody and similarly in **Simrapal Singh vs. UOI**, CRM-M-10276-2021, decided on 17.09.2021, bail was granted on custody of about 1 year, the recovery of 1.5 grams of charas, being marginally above non-commercial quantity, against which the SLP filed by UOI was dismissed vide order dated 23.01.2023. In **Balwinder Singh vs. State of Punjab** in CRM-M-37684-2021 decided on 14.02.2022, the bail was granted to the petitioner while relying on **Jagjit Singh @ Jagga Gill vs. State of Punjab** 2020(2) RCR (Cr.) 612, the alleged recovery effected being 258/260 grams of heroin, the custody was of 1 year and 16 days and while holding that the bar under Section 37 NDPS Act in the case of commercial quantity cannot be termed to be absolute in nature and the departure can be made if the alleged recovery is marginally higher than the commercial quantity.

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 petitioners are in custody for the last 11 months and 23 days; not involved in any other case; alleged recovery is marginally above the non-commercial quantity; though the charges stand framed on 16.02.2023, however, none out of the 10 prosecution witnesses, has yet been examined, the trial is likely to take a considerable time, thus further incarceration of the petitioners would be violative of their rights 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 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 their 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 is 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.

(AMAN CHAUDHARY)
JUDGE

01.08.2023
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Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No