

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

229

CRM-M-39078-2023 (O&M)

Date of decision: 17.08.2023

Nzube

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Yashpal Thakur, 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. for the grant of regular bail to the petitioner in case FIR No.62 dated 26.04.2022, registered under Sections 21C, 61 and 85 of NDPS Act, at Police Station Sirhind, District Fatehgarh Sahib.

2. Learned counsel contends that the petitioner is in custody for about 1 year and 3 months. The alleged recovery effected from the petitioner is marginally above the non-commercial quantity of contraband, it being 260 grams of Heroin contained in a transparent polythene from the right pocket of the trousers. Co-accused, Chukwu Ebuka, who was apprehended along with the petitioner and recovery of 255 grams of Heroin was effected from him, was granted regular bail, by this Court vide order dated 08.05.2023, Annexure P-3, after being in custody for 1 year and 5 day. Charges were framed on 11.10.2022, however, out of 11 prosecution witnesses, 5 have been examined. The petitioner is not involved in

any other case. He relies on the orders passed by Co-ordinate Bench of this Court in the case of **Navdeep Kaur vs. State of Punjab** in CRM-M-36880-2023, decided on 04.08.2023. Further reliance is placed on the orders passed by this Court in **Jaspal Singh @ Judge vs. State of Punjab** in CRM-M-30565-2021 decided on 15.12.2021, **Gurpreet Singh vs. State of Punjab** in CRM-M-45214-2021 decided on 23.03.2022, **Balwinder Singh vs. State of Punjab** in CRM-M-37684-2021 decided on 14.02.2022 and **Mani Garg vs. State of Punjab** in CRM-M-15575-2022 decided on 03.05.2023.

3. The custody certificate dated 16.08.2023 has been filed by learned State counsel, as per which, the petitioner is behind bars for 1 year 3 months and 18 days.

4. Learned State counsel opposes the bail on the ground that the petitioner was apprehended at the spot and the commercial quantity of contraband has been recovered from him. She is however unable to controvert the submissions with regard to stage of the case, recovery being marginally higher than non-commercial, co-accused having been granted bail and the petitioner is not involved in any other case.

5. Heard.

6. This Court has granted regular bail in **Navdeep Kaur**, (supra), wherein recovery was 250 grams of Heroin with custody of 11 months; in **Gurpreet Singh** (supra), after a custody of little over 1 year, 255 grams of heroin recovered and no criminal antecedents; in **Balwinder Singh** (supra), by relying on **Jagjit Singh @ Jagga Gill vs. State of Punjab** 2020(2) RCR (Cr.) 612, recovery effected of 258/260 grams of heroin with custody of 1 year and 16 days, 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 of India 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 a 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 under 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 the last 1 year, 3 months and 18 days; not involved in any other case; alleged recovery is marginally above the non-commercial quantity; co-accused having been granted bail; charges stand framed on 11.10.2022, however, 5 out of 11 prosecution witnesses have 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.

(AMAN CHAUDHARY)
JUDGE

August 17, 2023
M.Kamra

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