

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

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CRR-1832-2023 (O&M)
Date of decision: 09.11.2023

Rahul Kumar

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. G.S. Verma, Advocate for the petitioner

Mr. Manipal Singh Atwal, DAG, Punjab.

AMAN CHAUDHARY, J.

CRM-33819-2023

This application has been filed for condonation of delay of 84 days in filing the present petition.

Notice in the application.

Mr. Manipal Singh Atwal, DAG, Punjab, accepts notice on behalf of the respondent-State and has no objection, in case, the application is allowed.

For the reasons stated in the application, the same is allowed and delay of 84 days in filing the present petition is condoned.

CRR-1832-2023

1. The present revision petition has been filed to challenge the impugned order dated 23.12.2022 passed by the learned Principal Magistrate Juvenile Justice Board, Ludhiana, whereby, the bail to the petitioner, aged 17 years was declined and affirmed by the learned Additional Sessions Judge/Children Court, Ludhiana vide judgment dated

16.02.2023. The petitioner, being juvenile, has prayed for setting aside the impugned orders passed by both the Courts below.

2. Learned counsel contends that the petitioner was 17 years old at the time of alleged recovery of 3 kg. Opium affected from him. He has been in custody for the last 1 year and 2 months. He is not involved in any other case. There is non-compliance of mandatory provisions of Section 42 and of NDPS Act. No independent witness has been joined at the time of recovery. The challan was presented on 22.11.2022 and charges are yet to be framed. There are a total of 9 prosecution witnesses. He relies on the order passed by this Court in **Modh. Nisar @ Happy vs. State of Punjab** in CRM-M-33898-2022 passed on 01.09.2022, wherein after considering the facts and circumstances of the case, bail was granted to the petitioner after about 1 year and 1 month and on **Vishvas vs. State of Punjab** in CRR-53-2021 passed on 08.02.2021.

3. Learned State counsel opposes the bail on the ground that commercial quantity of contraband was recovered from the petitioner, who was apprehended at the spot. He is however unable to controvert the submissions made regarding the stage of the case and petitioner being not involved in any other cases.

4. Heard.

5. 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 (CrI.) 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 CRR-1191-2020, titled as **Nazeem Khan @ Jimmi vs. State of Haryana**, decided on 06.07.2021, wherein commercial quantity of contraband was recovered, enlarged the accused-jvenile on bail having been in custody for 1 year and almost 1 month. 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.

6. Keeping in view the facts and circumstances of the case, in particular that the petitioner was a juvenile at the time of recovery; is in custody for last 1 year and 2 months; not involved in any other case; challan stands presented on 22.11.2022, however, charges have not been framed; in all there are 9 prosecution witnesses; 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.

7. As a result, the present petition is allowed and the impugned

orders dated 23.12.2022 passed by the learned Principal Magistrate, Juvenile Justice Board, Ludhiana and dated 16.02.2023 passed by the learned Additional Sessions Judge/Children Court, Ludhiana, are hereby set aside. The petitioner is ordered to be released on bail, subject to his furnishing bail/surety bonds to the satisfaction of the Principal Magistrate, Juvenile Justice Board, Ludhiana and 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.

8. 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.

9. 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.

09.11.2023
Ankur

(AMAN CHAUDHARY)
JUDGE

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