

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

223

CRM-M-42432-2022 (O&M)

Date of decision: 11.09.2023

Sunita Rani

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. JS Sandhu, Advocate for the petitioner.

Mr. Manipal Singh Atwal, 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 petitioner in FIR No.80 dated 09.07.2022, registered under Sections 22/29/61/85 of NDPS Act, at Police Station Barnala, District Barnala.

2. Learned counsel contends that the petitioner is in custody for last 1 year and about 2 months. Recovery that has been alleged in the present case having been effected from the petitioner is marginally above the non-commercial quantity, it being 272 grams of tramadol contained in a transparent plastic bag. There is non-compliance of mandatory provisions of Section 50 of NDPS Act. The petitioner is not involved in any other case under the NDPS Act. Charges stand framed on 04.10.2022 and out of 10 prosecution witnesses, only 4 have been examined. 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, **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 and **Basanti Mondal and Ors. vs. State of West Bengal**, SLP (Crl.) No.12586/2022 dated 29.03.2023.

3. The custody certificate dated 09.09.2023, filed by learned State counsel is taken on record. As per the same, the petitioner is behind bars for last 1 year, 1 month and 29 days.

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 her and the recovery of which was effected from ground when the bag containing it fell down and the tablets got scattered. He is however unable to controvert the submissions made regarding the stage of the case and petitioner being not involved in any other case under the NDPS Act.

5. Heard.

6. Hon'ble The Supreme Court in **Basanti Mondal** (supra) granted bail to a lady after 1 year of custody and 6548 bottles were recovered and each bottle contained 100 ml of phensedyl cough linctus codeine. 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** (supra), **Gursant Singh @ Santu** (supra), 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** (supra), 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** (supra), 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.

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 last 1 year, 1 month and 29 days; not involved in any other case under NDPS Act; charges were framed on 04.10.2022 and only 4 witnesses, out of 10 have been examined so far; the trial is likely to take a considerable time, thus further incarceration of the petitioner would be violative of her 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 her furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate concerned and subject to her 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, she is an accused, or for commission of which she 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

her liberty.

- (vii) The petitioner shall furnish her 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.

11.09.2023
ashok

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No