

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

CRM-M-41749-2023 (O&M)

Date of Decision: 29.08.2023

Brij Mohan @ Kala

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Kanwar Inder Singh, Advocate, for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No. 67 dated 27.05.2019, under Sections 15/61/85 of NDPS Act, registered at Police Station City 1, Malerkotla.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody for 4 years and 3 months and only four prosecution witnesses have been examined till date. He submitted that it is a case where the allegations against the petitioner were that he was coming in a canter alongwith other co-accused and there had been a recovery of 250 kgs. of poppy husk from the canter. He submitted that the present case was planted upon the petitioner and the petitioner is not involved in any other case and has got clean antecedents. He further submitted that be that as it may his total custody is 4 years and 3 months and he has relied upon a judgment of

Hon'ble Supreme Court in *Dheeraj Kumar Shukla v. The State of Uttar Pradesh (Special Leave to Appeal (Crl.) No.(s) 6690 of 2022)* and also a recent judgment of Supreme Court in *Rabi Prakash Versus State of Odisha, Special Leave to Appeal (Crl.) No.4169 of 2023* to contend that long custody itself is a ground for grant of bail notwithstanding the bar contained under Section 37 of the NDPS Act.

3. On the other hand, Mr. Sarabjit Singh Cheema, DAG, Punjab has submitted that so far as the custody of the petitioner is concerned, the same is correct and it is also correct that only four witnesses have been examined till date and the petitioner is not having any criminal background and is not involved in any other. He has however opposed the grant of regular bail to the petitioner on the ground that the recovered quantity from the petitioner and the other co-accused falls in the category of commercial quantity and therefore, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

4. I have heard the learned counsel for the parties.

5. It is a case where the petitioner has already faced incarceration for 4 years and 3 months and only four witnesses have been examined till date. The petitioner is stated to be not involved in any other case and has got clean antecedents.

6. The Hon'ble Supreme Court in *Dheeraj Kumar Shukla's case* (supra) has observed as under:-

“3. It appears that some of the occupants of the 'Honda City' Car including Praveen Maurya @ Puneet Maurya have since been released on regular bail. It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted.

However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed.”

7. Recently the Hon'ble Supreme Court in ***Rabi Prakash Versus State of Odisha (Supra)*** has also discussed the effect of Section 37 of the NDPS Act in such like cases of long custody. The relevant portion of the aforesaid judgment contained in para No.4 is reproduced as under:-

4. As regard to the twin conditions contained in [Section 37](#) of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under [Article 21](#) of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under [Section 37\(1\)\(b\)\(ii\)](#) of the NDPS Act.

8. After hearing the learned counsel for the parties, this Court is of the view that considering the custody of the petitioner which is 4 years and 3 months and clear antecedents, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner in the light of Article 21 of the Constitution of India and the petitioner is entitled for the grant of bail.

9. Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned, if not

required in any other case.

10. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

29.08.2023

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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