

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

224

CRM-M-43290-2022

Date of decision: 06.07.2023

Jaswinder Singh @ Jassu

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. P. S. Sekhon, Advocate
for the petitioner

Mr. H. S. Sullar, Sr. DAG, Punjab

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in case FIR No. 103 dated 22.09.2021, registered under Sections 15 and 29 of the NDPS Act at Police Station Smalsar, District Moga.

2. Learned counsel contends that petitioner has been in custody for the last more than 1 year 9 months. He was the cleaner of the truck from which the alleged recovery is stated to have been effected. The owner-cum-driver of the truck namely Roop Singh who was also apprehended alongwith the petitioner has since been granted regular bail vide order dated 24.04.2023. The provision of Section 50 of the NDPS Act has not been complied with. He is a poor person and has been falsely implicated in the present case. Though, charges were framed on 28.04.2022, however, none out of 14 Pws have been examined. The petitioner is involved in one more case involving non-commercial quantity of contraband in which he is on bail. In this regard, reliance is placed on the judgment passed by

Hon'ble The Supreme Court titled as **Maulana Mohd. Amir Rashadi vs. State of U.P. and others**, 2012(2) SCC 382.

3. The custody certificate dated 05.07.2023, filed by the learned State counsel is taken on record. As per the same, the petitioner is behind bars for the last 1 year 9 months 11 days.

4. Learned State counsel opposes the bail on the ground that the commercial quantity of contraband was recovered from the truck of which he was the cleaner and he is involved in one more case though involving non-commercial quantity. However, he is unable to controvert the submissions with regard to stage of the case, co-accused having been granted bail and the petitioner being granted bail in the other case.

5. Heard.

6. Hon'ble The Supreme Court in the case of **Maulana Mohd. Amir Rashadi** (Supra) had held that, "As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court, etc."

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. Similarly, in the case of **Shariful Islam @ Sarif versus The State of West Bengal** SLP (Crl.) No.4173/2022, decided on 04.08.2022, Hon'ble

The Supreme Court granted bail to the petitioner in a case of recovery of commercial quantity of contraband, considering incarceration for over 1 year and 6 months and there being no likelihood of completion of trial in the near future. In the case of **Bhupender Singh vs. Narcotic Control Bureau** (2022) 2 RCR (Cr1.) 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 the case of **Balraj Singh vs. State of Punjab** CRM-M-57386-2022, decided on 14.12.2022 has followed the dictum laid down by Hon'ble The Supreme Court and granted the bail to the petitioner therein after he had undergone total custody of 1 year and 6 months. In the case of **Munasi Masih vs. State of Punjab**, CRM-M-31504-2022, decided on 06.2.2023, this Court granted bail to the petitioner 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 has been in custody for the last 1 year 9 months 11 days; co-accused has been granted bail; charges have been framed but out of 14 Pws, none have been examined; the trial is likely to take considerable time, thus, his further incarceration would not serve any useful purpose, 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:-

1. The petitioner will not tamper with the evidence during the trial.
 2. The petitioner will not pressurize/intimidate the prosecution witnesses.
 3. The petitioner will appear before the trial Court on each and every date fixed, unless is exempted by a specific order of Court.
 4. 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.
 5. 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.
 6. The petitioner shall not in any manner misuse his liberty.
 7. 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.
 8. The petitioner shall not leave the country without prior permission of the trial Court.
 9. The trial Court/Duty Magistrate may impose any other condition, as deemed appropriate while releasing the petitioner.
10. It is made clear that in case of any infraction 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

06.07.2023

Mehak

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