

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

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CRM-M-45297-2022

Date of decision: 29.03.2023

BHUPINDER SINGH

....Petitioner(s)

Versus**STATE OF PUNJAB**

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Sanjeev Kumar Arora, Advocate
for the petitioner.

Mr. Manipal Singh Atwal, DAG, Punjab.

AMAN CHAUDHARY. J.

The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in respect of FIR No.52 dated 27.06.2022, under Sections 22 and 61 of the NDPS Act, registered at Police Station Sadar Abohar, District Fazilka.

Learned counsel contends that the petitioner is in custody for the last 9 months and 1 day having been arrested on 29.06.2022. The alleged recovery of 800 tablets weighing 51.12 gms. is marginally above the commercial quantity of 50 gms. effected from the dashboard of the truck, stated to be driven by the petitioner. He is not involved in any other case under the NDPS Act. Challan has been presented on 07.12.2022, however, charges are to be framed and in all, there are 17 prosecution witnesses. He relies on the judgment passed by this Court in CRM-M-5063-2023 titled as Baldev Singh Vs. State of Punjab wherein bail was

granted in a case where the recovery was 259 grams as against the commercial quantity of 250 gms. of Tramadol Hydrochloride tablets and the petitioner was granted concession of regular bail having a custody of 5 months. He further relies on the judgment passed by this Court in CRM-M-57151-2022 titled as Ravinder Singh Vs. State of Punjab wherein the petitioner was granted bail in a case of recovery being marginally above the non commercial quantity and with custody of 6 months. Further relies on CRM-M-3055-2021 titled as Gagandeep Vs. State of Punjab, wherein the petitioner with custody of 8 months was granted bail in a case of recovery marginally higher than the commercial quantity. Further reliance has been placed upon the judgment in CRM-M-63-2023 titled as Deepak Kumar @ Babbu wherein the bail was granted after the recovery of 2 kg 600 gms of opium considering it marginally above the non-commercial quantity and custody being 8 months.

Learned State counsel has produced the custody certificate, which is taken on record, affirming the custody as stated by learned counsel for the petitioner. He opposes the bail on the ground that the petitioner is the owner of the truck which was being driven by him and the recovery was effected from the said vehicle and it falls within the commercial quantity. However, he is unable to controvert the submissions made by learned counsel for the petitioner with regard to custody, stage of trial and the petitioner not being involved in any other case under the NDPS Act as also the orders relied upon.

Heard.

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 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 of India 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 (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. 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 of India 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 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.

In view of the facts and circumstances of the case, judgments referred to above and in particular that the petitioner is in custody for the last 9 months

and 1 day; the alleged recovery of the contraband is stated to be marginally higher than the commercial quantity; he is not involved in any other case under the NDPS Act; challan has been presented, however, charges are yet to be framed and in all, there are 17 prosecution witnesses, the trial is likely to take a considerable time, 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 the 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.

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 him 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 deposit his passport, if any, with the Trial Court forthwith and in case, he does not have the passport, he shall furnish a specific affidavit in this regard.

It is made 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.

In view of the above, this Court makes it clarified that the observations made herein above are limited for the purpose of present proceedings and would not be construed as any opinion on the merits of the case and the trial would proceed independently of the aforesaid observations.

(AMAN CHAUDHARY)
JUDGE

March 29, 2023
Mehak

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