

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

224

CRM-M-44074-2023 (O&M)

Date of decision: 12.09.2023

Harjot Singh @ Sahib

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. GS Simble, 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.148 dated 29.05.2022, registered under Section 21 of NDPS Act, 1985 (challan presented under Sections 21, 29, 61 and 85 of NDPS Act and Section 181 of Motor Vehicle Act), at Police Station City Kharar, District SAS Nagar Mohali.
2. Learned counsel contends that the petitioner is in custody for 1 year and more than 3 months. Recovery that has been alleged in the present case, having been effected from the person of the petitioner is marginally above the non-commercial quantity, it being 260 gms of heroin from a transparent plastic bag recovered from the right pocket of his shorts while 60 gms was recovered from the dashboard of the car, in which there were two more occupants. Co-accused, Manmeet Cheema, who was driving the vehicle, that belonged to his mother as also Jagdish Singh @ Sukh, who was a co-passenger have been granted bail by this Court vide order dated 15.03.2023, Annexure P-10. No independent witness was joined in the

present case. The petitioner alleges false implication. Charges stood framed on 21.12.2022 and despite 15 opportunities having been granted, none out of the 17 prosecution witnesses has been examined. The petitioner is involved in one more case, wherein 35g heroin was recovered from him, wherein he is on bail. Reliance is placed on the judgment of Hon'ble The Supreme Court in **Maulana Mohd. Amir Rashadi vs. State of U.P. and others**, 2012(2) SCC 382.

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 1 year, 3 months and 11 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 him while he was travelling with two co-accused in a car. He is however unable to controvert the submissions made regarding the stage of the case, petitioner being on bail in another case and co-accused having been granted bail.

5. Heard.

6. 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 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, 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 vs. State of Punjab**, CRM-M-9712-2021 decided on 06.09.2021, 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 vs. UOI**, CRM-M-10276-2021, decided on 17.09.2021, 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. Hon'ble The Supreme Court in **Basanti Mondal and Ors. vs. State of West Bengal**, SLP (Crl.) No.12586/2022 dated 29.03.2023, 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.

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 an 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, 3 months and 11 days; on bail in another case; co-accused have been granted bail; charges were framed on 21.12.2022 however, none out of a total of 17 prosecution witnesses have been examined so far; 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.

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:-

- (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.

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.

12.09.2023
ashok

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No