

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

227

CRM-M-44377-2023 (O&M)

Date of decision: 13.09.2023

Balwant Singh @ Satta

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Prateek Pandit, 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.157 dated 04.08.2019, registered under Section 22 of NDPS Act, at Police Station Kotwali, Kapurthala, District Kapurthala.

2. Learned counsel contends that the petitioner is in custody for 1 year and 6 months. Recovery that has been alleged in the present case, effected from him is marginally above the non-commercial quantity, it being 110 gms of Alprazolam from a transparent polythene bag which was allegedly thrown on the ground. There is non-compliance of mandatory provisions of Sections 42, 50, 52A and 57 of NDPS Act. Charges stood framed on 21.04.2022 and none out of the 11 prosecution witnesses has been examined. The petitioner is involved in two more cases, wherein he has undergone the sentence awarded of 1 month in each, on his having confessed to being an addict. 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 12.09.2023, filed by learned State counsel is taken on record. As per the same, the petitioner is behind bars for 1 year, 5 months and 26 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. He is however unable to controvert the submissions made regarding the stage of the case, status of the other cases of the petitioner.

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. 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.

8. 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 a 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 vs. 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 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 06.02.2023, 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 under Article 21 of the Constitution of India.

9. Keeping in view the facts and circumstances of the case, in particular that the petitioner is in custody for last 1 year, 5 months and 26 days; undergone sentence in other cases; charges were framed on 21.04.2022 however, none out of 11 prosecution witnesses has 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.

10. 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.

11. 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.

12. 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.

13.09.2023
ashok

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No