

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

107+214

CRM-M-53412-2021 (O&M)
Date of decision: 28.02.2023

SHAM LAL

....Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CRM-M-814-2022(O&M)

GURMUKH SINGH

....Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Lalit Kumar Narang, Advocate
for the petitioner in CRM-M-53412-2021.

Mr. Munish Raj Chaudhary, Advocate
for the petitioner in CRM-M-814-2022.

Mr. Manipal Singh Atwal, DAG Punjab

AMAN CHAUDHARY. J.

CRM-292-2022

For the reasons stated in the application, same is allowed. Recovery
memo of intoxicant tablets is taken on record subject to all just exceptions.

CRM-M-53412-2021 & CRM-M-814-2022

This common order shall dispose of the above-mentioned two
criminal miscellaneous petitions as they arise out of a same FIR.

The present petitions have been filed under Section 439 Cr.P.C. for

the grant of regular bail to the petitioners in respect of FIR No.321 dated 28.06.2021, under Sections 22/25/29/61/85 of the NDPS Act, registered at Police Station City Barnala, District Barnala.

Learned counsel contend that the petitioners are in custody for the last 1 year, 7 months and 28 days. They contend that on secret information having been received, Kapur Singh was apprehended, who in his disclosure statement named Gurmukh Singh, who was arrested on 30.06.2021 and 1025 intoxicant tablets were recovered, who further nominated Sham Lal, who was then arrested on 01.07.2021 and from whom 1478 intoxicant tablets were recovered, which falls under the commercial quantity as per the Schedule of the NDPS Act. Petitioner Sham Lal is not involved in any other case. Charges have been framed on 21.03.2022 and only 1 out of 19 prosecution witnesses has since been examined.

Learned State counsel has placed on record the custody certificates of the petitioners dated 27.02.2023, as per which the custody of the petitioners is 1 year, 7 months and 28 days. He opposes the bail on the ground that recovery of intoxicant tablets, which falls under the commercial quantity as per the Schedule of the NDPS Act is effected from the petitioners. Petitioner Gurmukh Singh is involved in one other FIR registered under the Prisons Act. He is however unable to controvert the submissions made by learned counsel for the petitioners regarding stage of the trial and that petitioner Sham Lal is not involved in any other case.

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 afore-referred judgments facts and circumstances of the case and, in particular that the petitioners are in custody for the last 1 year, 7 months and 28 days; petitioners are not involved in any other case under the NDPS Act; though charges have been framed on 21.03.2022, however, only 1 out

of 19 prosecution witnesses has been examined; the trial is likely to take a considerable time, further incarceration of the petitioners would be violative of their 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 petitions for grant of regular bail deserve to be allowed.

As a result, the present petitions are allowed. The petitioners are ordered to be released on regular bail, subject to their furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate concerned and subject to they not being required in any other case. The petitioners shall abide by the following conditions:-

1. The petitioners will not tamper with the evidence during the trial.
2. The petitioners will not pressurize/ intimidate the prosecution witnesses.
3. The petitioners will appear before the trial Court on each and every date fixed, unless are exempted by a specific order of Court.
4. The petitioners shall not commit an offence similar to the offence of which, they are accused, or for commission of which they are suspected of.
5. The petitioners 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 petitioners shall not in any manner misuse their liberty.
7. The petitioner shall furnish their 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 petitioners seek 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 petitioners shall deposit their passport, if any, with the Trial Court forthwith and in case, they do not have the passport, they shall furnish a specific affidavit in this regard.

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 petitioners 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.

A photocopy of this order be placed on the file of connected case.

(AMAN CHAUDHARY)
JUDGE

February 28, 2023

S.Sharma(syr)

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