

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

208

CRM-M-46915-2023(O&M)

Date of decision: 22.09.2023

Sukhwinder Singh

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Ram Bilas Gupta and
Mr. Parveen Chauhan, Advocates 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.311 dated 23.08.2022, registered under Sections 21, 29, 61 and 85 of NDPS Act, 1985 at Police Station City, District Ferozepur.

2. Learned counsel contends that the petitioner is in custody for 1 year and almost 1 month. The recovery that has been allegedly effected from the petitioner in the present case is marginally above the non-commercial quantity, it being 254 grams of heroin. The mandatory provisions of Section 50 of NDPS Act has not been complied with. No independent witness has been joined at the time of recovery. Co-accused Jyoti and Rajwinder Kaur have been granted regular bail by this Court vide orders dated 20.04.2023 and 18.08.2023, Annexures P-2 and P-3. Charges stand framed on 25.05.2023 and out of 11 prosecution witnesses,

none has been examined. The petitioner is not involved in any other case under the NDPS Act.

3. The custody certificate dated 21.09.2023, filed by learned State counsel is taken on record. As per the same, the petitioner is behind bars for 1 year and 25 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, petitioner being not involved in any other case under the NDPS Act and co-accused have been granted bail.

5. Heard.

6. This Court granted bail in **Satnam Singh @ Satta vs. State of Punjab**, CRM-M-23809-2022, dated 17.05.2023, wherein the recovery was marginally higher than the non-commercial quantity, the accused being behind bars for the last more than 10 months; in **Jaspal Singh @ Pala vs. State of Punjab**, CRM-M-45239-2019, decided on 25.02.2020, the alleged recovery was of 275 grams heroin; in **Tajinder Singh vs. State of Punjab**, CRM-M-8212-2022, alleged recovery was of 270 grams of heroin and the accused was behind bars since 7 months and **Ladwinder Singh @ Laddi vs. State of Punjab**, CRM-M-44383-2022, wherein the recovery was of 2kgs. 700 grams opium and the accused remain in custody for 9 months. Hon'ble The Supreme Court vide order dated 23.01.2023, dismissed the SLP (Crl.) No.18957 of 2022 in **Union of India vs. Simranpal Singh**, a case where the High Court had granted bail to the petitioner, who had remained in custody for about one year and the

recovery effected from him was of 1.5 kg charas.

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. 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 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 **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 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 and 25 days; not involved in any other case under NDPS Act; co-accused have been

granted bail; charges were framed on 25.05.2023 and out of a total of 11 prosecution witnesses, none 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.

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.

22.09.2023
ashok

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No