

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-51264-2022 (O&M)
Reserved on: 11.10.2023
Pronounced on: 22.12.2023

AJAY

... Petitioner

Versus

STATE OF HARYANA

... Respondent

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Argued by:- Mr. Anuj Arya, Advocate for the petitioner.

Mr. Surender Singh, AAG Haryana.
.....

SANJIV BERRY, J. (ORAL)

The instant petition has been preferred by the petitioner under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in the following case :-

FIR No.	Dated	Sections	Police Station
264	03.10.2021	20 of the NDPS Act	Sarai Khawaja, District Faridabad

2. Briefly, the facts as per the case of prosecution are that on 03.10.2021, SI Ratiram along with Head Constable Sandeep and others were present at NHPC by-pass in private vehicle in connection with patrolling duty. On receiving information from a reliable source that one Ajay coming from Palwal is carrying *ganja* in his car, a raiding party reached at the spot and apprehended him along with 68 kg and 570 grams of ganja from the three bags lying in the boot of the car.

3. Learned counsel for the petitioner contends that the petitioner is in custody since 03.10.2021 and has been falsely implicated in the case as nothing has been recovered from the conscious possession of the petitioner. After the completion of investigation, challan was presented in the Court on 21.12.2021 and charge was framed on 01.02.2022. Out of total 16 witnesses cited by the prosecution, none has been examined so far and the next date of hearing before the trial Court is 31.01.2024. Learned counsel further contends that co-accused Sujeet, from whose car the alleged contraband was recovered, has been granted regular bail by this Court vide order dated 27.09.2022 (Annexure P-6). He submits that there is no other case registered against the petitioner and the conclusion of trial would take sufficient long time, thus prays for grant of concession of bail to the petitioner.

4. *Per contra*, learned State counsel submits that the petitioner was apprehended at the spot with 68 kg 570 grams of ganja, which falls under the category of commercial quantity. He, however, has not disputed the stage of trial and that there is no other case registered against the petitioner.

5. Heard learned counsel for the parties and perused the record.

6. The Hon'ble 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 commercial quantity, 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, the Hon'ble Apex 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 **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 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.

7. The Hon'ble Supreme Court in **“Satender Kumar Antil Vs. Central Bureau of Investigation and another”**, 2022(10) SCC 51, discussed this issue with regard to delay in trial and its effect on the right to life under Article 21 of the Constitution of India. Para No.49 of the aforesaid judgment is reproduced as under:-

“49. Sub-section (1) mandates courts to continue the proceedings on a day-to-day basis till the completion of the evidence. Therefore, once a trial starts, it should reach the logical end. Various directions have been issued by this Court not to give unnecessary adjournments resulting in the witnesses being won over. However, the non-compliance of Section 309 continues with gay abandon. Perhaps courts alone cannot be faulted as there are multiple reasons that lead to such

adjournments. Though the section makes adjournments and that too not for a longer time period as an exception, they become the norm.

We are touching upon this provision only to show that any delay on the part of the court or the prosecution would certainly violate Article 21. This is more so when the accused person is under incarceration. This provision must be applied inuring to the benefit of the accused while considering the application for bail. Whatever may be the nature of the offence, a prolonged trial, appeal or a revision against an accused or a convict under custody or incarceration, would be violative of Article 21. While the courts will have to endeavour to complete at least the recording of the evidence of the private witnesses, as indicated by this Court on quite a few occasions, they shall make sure that the accused does not suffer for the delay occasioned due to no fault of his own.”

8. Admittedly, the petitioner was apprehended at the spot with the alleged contraband lying in the boot of the vehicle, which the petitioner was driving. It is not disputed that the petitioner is in custody for more than 2 years and 2 months. It is also not disputed that after the filing of challan, charge has been framed on 01.02.2022, however, none of the 16 witnesses cited by the prosecution has been examined so far, as such the trial may take sufficient long time to conclude.

9. Therefore, considering all these circumstances and also the fact that the petitioner is in custody for more than 2 years and 2 months and none of the 16 witnesses cited by the prosecution have yet been examined, despite the fact that charges were framed wayback on 01.02.2022 coupled with the

rights conferred under Article 21 of the Constitution of India, no purpose would be served by detaining the petitioner any longer in custody.

10. Consequently, without commenting on the merits of the case, the present petition is allowed. The petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of learned Trial Court/Duty Magistrate concerned, if not required in any other case; undertaking to regularly appear on each and every date; not to leave the country without prior permission of the Court; and not to tamper with evidence of prosecution in any manner.

11. It is further made clear that in case the petitioner is found involved in any case under the NDPS Act, after his release on bail, it will be open for the prosecution to move an application for cancellation of his bail in accordance with law.

12. Any observation made above shall not be construed as opinion of this Court on the merits of the case.

13. Pending miscellaneous application(s), if any, stand disposed of.

(SANJIV BERRY)
JUDGE

22.12.2023

Gyan

i)	Whether speaking/reasoned?	Yes/No.
ii)	Whether reportable?	Yes/No.