

218 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Neutral Citation No. 2023:PHHC:161755
CRM-M-50552-2023
Date of Decision: December 16, 2023

Bhoop Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Sumit Sangwan, Advocate for the petitioner.

Mr. Randhir Singh, Addl. A.G., Haryana.

DEEPAK GUPTA, J.(Oral)

Reply by way of affidavit of Shri Sajjan Singh, Deputy Superintendent of Police, Law & Order, alongwith custody certificate has been filed on behalf of respondent-State.

2. By way of present petition filed under Section 439 Cr.P.C., prayer is made for grant of regular bail in case FIR No.200 dated 25.06.2021, under Section 22 C of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') (Section 27A of NDPS Act added later on), registered at Police Station Adampur, District Hisar.

3. As per prosecution allegations, 20800 intoxicant tablets containing salt of tramadol hydrochloride were recovered from the possession of the petitioner on 25.06.2021.

4. Learned counsel for the petitioner contends that the petitioner is in custody for the last more than 02 years and 05 months. It is further contended that after filing of the challan on 18.08.2021, charges were framed on 30.09.2022, but not even a single witness has been examined. Later on, supplementary challan was filed qua co-accused and then fresh charges were framed on 15.09.2023, but not even a single witness has

been examined so far. Learned counsel for the petitioner contends further that the petitioner has been falsely implicated and that he has no criminal antecedent.

5. Learned State counsel could not refute the aforesaid contentions to the effect that petitioner is in custody for the more than 02 years and 05 months and not even a single witness has been examined so far. However, learned State counsel has opposed the petition by pointing out the fact that the recovered quantity falls in the commercial category and that there is bar under Section 37 of the NDPS Act to allow bail in such circumstances.

6. Heard. It is conceded by learned State counsel on the basis of custody certificate placed on record that the petitioner is in custody for the last 02 years, 05 months and 20 days in this case and he has no other criminal case pending against him. It is also disclosed in the status report that after framing of the charges on 15.09.2023, not even a single witness has been examined for far.

7. No doubt that alleged recovery of contraband from the petitioner is of commercial category, but at the same time, Court cannot ignore the custody period of the petitioner, which is more than 02 years and 05 months. The custody certificate further reveals that petitioner is not involved in any other case pertaining to the NDPS Act.

8. In “*Union of India v. K.A. Najeeb*”, (2021) 3 SCC 713, it has been observed by Hon’ble Supreme Court that it has been clarified in numerous judgments that the liberty guaranteed by Part III of the

Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial.

9. Besides, in a decision rendered by Hon'ble Supreme Court in *Mohammad Salman Hanif Shaikh Vs. The State of Gujarat, Special Leave to Appeal (Crl.) No.5530 of 2022*, decided on 22.08.2022, appellant had spent about 2 years in custody and trial was likely to take time. The case of the prosecution was that recovery of commercial quantity of contraband was effected from the appellant. However, considering the custody period, Hon'ble Supreme Court was pleased to grant regular bail.

In *Chitta Biswas @ Subhas Vs. The State of West Bengal, Criminal Appeal No.245/2020*, decided on 07.02.2020, Hon'ble Supreme Court was pleased to grant concession of bail to the appellant in a case where the custody period was 1 year and 7 months approximately despite the fact that recovery was of commercial quantity.

In yet another case titled *Gopal Krishna Patra @ Gopalrusma Vs. Union of India, Criminal Appeal No.1169 of 2022*, decided on 05.08.2022, the custody period of the appellant therein was approximately 2 years and 1 month. Considering the length of custody, concession of bail was granted.

In *Nitish Adhikary @ Bapan Vs. The State of West Bengal, Special Leave to Appeal (Crl.) No.5649/2022*, decided on 01.08.2022, the appellant therein was in custody for the last 1 year and 7 months in a case involving recovery of commercial category of contraband. The bail was granted by Hon'ble Supreme Court. In that case, Hon'ble Supreme Court

also made reference of Section 37 of the NDPS Act, but the bail was granted after considering the custody period.

10. In the present case also, as noticed earlier, custody period of the petitioner is more than 02 years and 05 months. He has no criminal antecedents. Trial may take time to conclude. In these facts and circumstances and by considering the views taken by the Hon'ble Supreme Court in various authorities referred above, this Court is of the view that rigor of Section 37 of the NDPS Act is required to be balanced with the right of speedy trial being a facet of fundamental right to life and liberty as enshrined in Article 21 of the Constitution of India.

11. Having regard to all the above facts and circumstances, but without commenting anything further on merits of the case, petition is allowed. Petitioner is admitted to regular bail on his furnishing requisite bail bonds and surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned, on usual terms and conditions.

Allowed.

December 16, 2023

sarita

(DEEPAK GUPTA)

JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No