

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

225

CRM-M-50618-2023(O&M)  
Date of decision: 12.10.2023

Rahul

....Petitioner

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

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Present : Mr. Gaurav Kalsi, Advocate for the petitioner

Mr. Manipal Singh Atwal, DAG Punjab

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**AMAN CHAUDHARY, J.**

1. Prayer in the present petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioners in case FIR No.49 dated 20.09.2022, registered under Section 15 of NDPS Act, 1985 at Police Station Nangal Bhoor, District Pathankot.
2. Learned counsel contends that the petitioner is in custody for 1 year and about 2 months. The alleged recovery effected from the vehicle i.e. tanker, in which he was sitting on the conductor seat, is marginally above the non-commercial quantity, it being 52 kg of poppy husk. No independent witness was joined. The mandatory provisions of the NDPS Act were complied with while effecting the recovery. Charges were framed on 13.03.2023, however, out of 11 prosecution witnesses, none has been examined. The petitioner is not involved in any other case. Reliance is placed on the judgments passed by this Court in the cases of **Nirbhai Singh vs. State of Punjab** in CRM-M-13035-2023, decided on

02.08.2023 and **Simrapal Singh vs. UOI**, CRM-M-10276-2021, decided on 17.09.2021, wherein recovery of 1.5 grams of charas was effected, against which the SLP filed by UOI was dismissed vide order dated 23.01.2023.

3. The custody certificate dated 11.10.2023 has been filed by learned State counsel, as per which, the petitioner is behind bars for 1 year and 19 days.

4. Learned State counsel opposes the bail on the ground that the petitioner was apprehended at the spot and the commercial quantity of contraband has been recovered from him and there is a confessional statement made by him that he was to sell the said contraband. He is however unable to controvert the submissions in so far as the stage of the case and petitioner being not involved in any case are concerned.

5. Heard.

6. This Court in cases of **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 as also in **Nirbhai Singh and Simrapal Singh** (supra), bail was granted to the accused on custody of about 1 year, the recovery of contraband being marginally above non-commercial quantity. The SLP filed by UOI in **Simrapal Singh** (supra) was dismissed vide order dated 23.01.2023. In **Balwinder Singh vs. State of Punjab** in CRM-M-37684-2021 decided on 14.02.2022, the bail was granted to the petitioner while relying on **Jagjit Singh @ Jagga Gill vs. State of Punjab** 2020(2) RCR (Cr.) 612, the alleged recovery effected being 258/260 grams of heroin, the custody was of 1 year and 16 days and while holding that the

bar under Section 37 NDPS Act in the case of commercial quantity cannot be termed to be absolute in nature and the departure can be made if the alleged recovery is marginally higher than the commercial quantity.

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. 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 the last 1 year and 19 days; alleged recovery is marginally above the non-commercial quantity; not involved in any other case; charges were framed on 13.03.2023 but none out of 11 prosecution witnesses has yet been examined; the trial is likely to take a considerable time, thus further incarceration of the petitioner would be violative of their rights 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 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.

October 12, 2023

M.Kamra

Whether speaking/reasoned

Whether reportable

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Yes / No

Yes / No

(AMAN CHAUDHARY)  
JUDGE