

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

213

CRM-M-60141-2022

Date of decision: 09.08.2023

Laxmi Singh @ Muskan

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Ruhani Chadha, Advocate
for the petitioner

Mr. H.S. Sullar, Sr. 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 case FIR No. 18 dated 24.01.2020, registered under Sections 21 and 29 of the NDPS Act at Police Station Special Task Force, District STF Wing, SAS Nagar.

2. Learned counsel contends that the petitioner, a lady aged 43 years, has been in custody for 3 years and about 7 months. The alleged recovery effected from her was 560g of heroin. The mandatory provision of Section 50 of the NDPS Act was not complied with and no independent witness was joined while effecting the recovery. Even the recovery memo was not got signed from her. Charges have been framed but only 3 out of 12 PWs have been examined. She is involved in one more case under the NDPS Act wherein non-commercial quantity of contraband was recovered and she is on bail in the said case. In this regard, reliance is placed

on the judgment passed by Hon'ble The Supreme Court titled as **Maulana Mohd. Amir Rashadi vs. State of U.P. and others**, 2012(2) SCC 382.

3. The custody certificate dated 08.08.2023, filed by the learned State counsel is taken on record. As per the same, the petitioner is behind bars for 3 years 6 months 16 days.

4. Learned State counsel opposes the bail on the ground that the commercial quantity of contraband was recovered from the petitioner who was apprehended at the spot. However, he is unable to controvert the submissions with regard to the stage of the case and the petitioner being on bail in another case.

5. Heard.

6. Hon'ble The Supreme Court in the case of **Maulana Mohd. Amir Rashadi** (Supra) had held that, "As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court, etc."

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. 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 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 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 the petitioner 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 3 years, 6 months and 16 days; on bail in the other case; only 3 out of 12 prosecution witnesses have yet been examined, the trial is likely to take a considerable time, further incarceration of the petitioner would be violative of her 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 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 her furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate concerned and subject to her 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, she is an accused, or for commission of which she 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 her liberty.
- (vii) The petitioner shall furnish her 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 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.

(AMAN CHAUDHARY)
JUDGE

09.08.2023

Mehak

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No