

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

233

CRM-M-60329-2023

Date of Decision: 06.12.2023

Karanbir Singh @ Karni

...Petitioner

versus

State of Punjab

...Respondent

CORAM : HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Sandeep Verma, Advocate
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 the grant of regular bail to the petitioner in case FIR No.120 dated 19.12.2022, registered under Section 21 of NDPS Act, 1985 (hereinafter referred to as "the Act") at Police Station Sadar Moga, District Moga.

2. Learned counsel contends that the petitioner is in custody for about 1 year. The alleged recovery effected from him was marginally above the non-commercial quantity, it being 270 grams of heroin. There is non-compliance of mandatory provisions of Sections 42 and 50 of the Act. No independent witness was joined at the time of the recovery proceeding. Co-accused Satbir Singh @ Satvir Singh has been granted regular bail by this Court vide order dated 15.11.2023, after being in custody for almost the same period. Charges were framed on 07.06.2023, however, none out of 19 prosecution witnesses has been examined. The petitioner is not involved in any other case.

3. The custody certificate dated 05.12.2023 has been filed by learned State counsel. As per the same, the petitioner is behind bars for 11 months and 17 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. He is however unable to controvert the submissions with regard to stage of the case as also the petitioner not being involved in any other case and co-accused has been enlarged on 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 and the accused was behind bars for about 11 months; 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 (CrI.) 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. Keeping in view the facts and circumstances of the case, in particular that the petitioner is in custody for the last 11 months and 17 days; not involved in any other case under the NDPS Act; co-accused having been granted bail; Charges stood framed on 07.06.2023; out of a total of 19 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 the 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.

(AMAN CHAUDHARY)
JUDGE

06.12.2023
Hemant

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No