

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-3407-2024
Date of decision: 21.02.2024

AMARJEET SINGH @ RODAPETITIONER(S)

Versus

STATE OF PUNJABRESPONDENT(S)

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY

Present:- Mr. M.S. Dhami, Advocate for the petitioner.

Mr. Ankit Grewal, DAG, Punjab.

SANJIV BERRY, J.(ORAL)

1. Status report dated 15.02.2024 in the form of an affidavit of Deputy Superintendent of Police, Sub Division Nakodar, District Jalandhar (Rural) has been filed. The same is taken on record. Copy thereof has been supplied to learned counsel for the petitioner.
2. 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 (Annexure P-1) :-

FIR No.	Dated	Section	Police Station
0090	25.06.2022	15 (subsequently added 15(c) vide DDR No.038 dated 25.06.2022) of NDPS Act.	Sadar Nakodar, District Jalandhar.

3. It is, *inter alia*, submitted by learned counsel for the petitioner that the petitioner is innocent and has been falsely implicated in this case. He further submits that the petitioner was not working as regular driver with Budh Singh, co-accused, whose canter he was driving on the

CRM-M-3407-2024

2

particular date. He submits that the petitioner was not aware of the articles lying in the vehicle and he has been in custody since 25.06.2022. He submits that the co-accused Budh Singh, owner of the canter, who was sitting in the canter itself at the time of said recovery, has already been granted concession of bail vide order dated 09.01.2024 passed in CRM-M-59451-2023 titled '*Budh Singh alias Sabbi Versus State of Punjab*' (Annexure P-5) by this Court, as such, he prayed for grant of bail to the petitioner.

4. Per contra, learned State counsel, referring to the reply, has submitted that the petitioner and the co-accused Budh Singh having being apprehended in the instant FIR and from the canter driven by the petitioner, owned by co-accused Budh Singh, 82 kg of poppy husk was recovered, as such, the petitioner does not deserve concession of bail. He, however, admitted that there is no other case registered against the petitioner, the passing of the order Annexure P-5 is not disputed.

5. After considering the rival contentions and perusing the record, it transpires that the petitioner along with co-accused Budh Singh were arrested by police on 25.06.2022. The petitioner was driving the canter in person whereas Budh Singh, owner of the canter, was sitting beside him and from the search of the canter 82 kg of poppy husk was recovered. Admittedly, the challan has been presented after completion of investigation and out of 13 witnesses cited by the prosecution, none has been examined till date.

6. It is pertinent to mention here that while dealing with the bail

CRM-M-3407-2024

3

application preferred by co-accused Budh Singh alias Sabbi, the owner of the canter, who was also apprehended at the spot while travelling in the said canter driven by the petitioner vide Annexure P-5, it has been observed as under:

“Learned counsel contends that the petitioner is in custody for 1 year and more than 6 months. The mandatory provisions of Sections 42, 50, 52-A and 57 of the Act were not complied with. No independent witness was joined at the time of recovery. Charges had been framed on 22.09.2022, however, none out of 13 prosecution witnesses has been examined. He is not involved in any other case under the Act.

Learned State counsel opposes the bail on the ground that commercial quantity of contraband was recovered from the petitioner, who was apprehended at the spot. He is unable to controvert the submissions made regarding the custody, stage of the case as also the petitioner not being involved in any other case.

Heard.

*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. Similarly, in the case of **Shariful Islam @ Sarif vs. 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 **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.*

Keeping in view the facts and circumstances of the case, in particular that the petitioner is in custody for last 1 year and more than 6 months; not involved in any other case under the NDPS Act; Charges were framed on 22.09.2022 and out of a total of 13 prosecution witnesses, none has been examined so far; the trial is likely to take a considerable time, thus his further incarceration would be violative of his right 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.

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.”*

7. Learned State counsel has not disputed the arguments of learned counsel for the petitioner that the case of petitioner is at parity with co-accused Budh Singh. None out of 13 witnesses, as stated above, has been examined by the prosecution till date. The petitioner is in custody since 25.06.2022. The conclusion of trial, to ascertain criminal liability if any of the petitioner, will take sufficient long time. This coupled with the fact that the co-accused Budh Singh has already been granted concession of bail vide order dated 09.01.2024 (Annexure P-5) and keeping in view the judgments of Hon'ble Supreme Court referred to in the said order (Annexure P-5) passed in CRM-M-59451-2023, the case of the petitioner

CRM-M-3407-2024

6

being at similar footing, thus, the petitioner is held entitled for concession of regular bail.

8. Considering the above facts and circumstances and the pace of trial, 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 NDPS Act can be diluted in the facts and circumstances of present case.

9. Resultantly, in the light of the above discussion, without commenting on the merits of the case, the present petition is allowed. The petitioner is ordered to be released on regular bail subject to furnishing bail bonds/surety bonds to the satisfaction of learned 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 further made clear that in case the petitioner is found involved in any case under 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.

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

(SANJIV BERRY)
JUDGE

21.02.2024
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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |