

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-12071 of 2022 (O&M)
Reserved on: 07.02.2024
Pronounced on:28.02.2024

SANDIP KUMAR @ SANJU
... Petitioner

Versus

STATE OF PUNJAB
... Respondent

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present: Mr. Kunal Choksi, Advocate, for
 Mr. SPS Khaira, Advocate for the petitioner.

 Mr. Ankit Grewal, DAG, Punjab.

SANJIV BERRY, J. (ORAL)

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	Sections	Police Station
55	19.05.2021	15 of NDPS Act	Meharban, District Ludhiana, Punjab.

2. In *nutshell* the case put forth by the prosecution is that a secret
information was received that Sunny @ Mahe and Sandeep Kumar @ Sanju
are habitual of selling poppy husk at high price by bringing the same from
other states and are coming from village Khasi Khurd side towards village
Kandiala and they may be apprehended with huge quantity of poppy husk.

Finding information trustworthy, picket checking of suspicious persons was done and during the same a canter was signalled to stop. The driver of the vehicle stopped the canter and ran away leaving the canter. One person sitting on the conductor side was apprehended and he disclosed his name as Sandeep Kumar @ Sanju. On search of the canter 129 kg of poppy husk and poppy pods were recovered from the canter.

3. Learned counsel for the petitioner contends that the petitioner is innocent and has been falsely roped in by the police in the present case. He contends that petitioner is in custody since 19.05.2021, after completion of investigation challan was presented in Court on 11.10.2021 and charges have been framed on 09.12.2021. He further contends that nothing is to be recovered from the petitioner and petitioner is having clean antecedents, and conclusion of trial will take sufficient long time and keeping in view the long custody, he prays for grant of concession of regular bail to the petitioner.

4. *Per contra*, learned State counsel submits that the petitioner was apprehended at the spot and on search of canter 129 kg of poppy husk and poppy pods were recovered which falls under the category of commercial quantity as such he is not entitled for grant of concession of bail as per the provisions of Section 37 of the NDPS Act. He, however, has not disputed the stage of trial, Challan has been presented in Court on 11.10.2021, charges have been framed on 09.12.2021 and 16 witnesses have been cited by the prosecution and out of them only 1 witness has been examined so far.

5. Heard learned counsel for the parties and perused the record.

6. The Hon'ble 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 commercial quantity, 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 vs. The State of West Bengal** SLP (Crl.) No.4173/2022, decided on 04.08.2022, the Hon'ble Apex 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.

7. The Hon'ble Supreme Court in **“Satender Kumar Antil Vs. Central Bureau of Investigation and another”**, 2022(10) SCC 51, discussed this issue with regard to delay in trial and its effect on the right to life under Article 21 of the Constitution of India. Para No.49 of the aforesaid judgment is reproduced as under:-

“49. Sub-section (1) mandates courts to continue the proceedings on a day-to-day basis till the completion of the evidence. Therefore, once a trial starts, it should reach the logical end. Various directions have been issued by this Court not to give unnecessary adjournments resulting in the witnesses being won over. However, the non-compliance of Section 309 continues with gay abandon. Perhaps courts alone cannot be

faulted as there are multiple reasons that lead to such adjournments. Though the section makes adjournments and that too not for a longer time period as an exception, they become the norm.

We are touching upon this provision only to show that any delay on the part of the court or the prosecution would certainly violate Article 21. This is more so when the accused person is under incarceration. This provision must be applied inuring to the benefit of the accused while considering the application for bail. Whatever may be the nature of the offence, a prolonged trial, appeal or a revision against an accused or a convict under custody or incarceration, would be violative of Article 21. While the courts will have to endeavour to complete at least the recording of the evidence of the private witnesses, as indicated by this Court on quite a few occasions, they shall make sure that the accused does not suffer for the delay occasioned due to no fault of his own.”

8. Admittedly, the petitioner was apprehended at the spot and on search of the canter the alleged contraband lying in the vehicle, in which the petitioner was sitting on the conductor side, was recovered. It is not disputed that the petitioner is in custody for more than 2 years and 9 months and 9 days. It is also not disputed that challan has been presented in Court on 11.10.2021, charges have been framed on 09.12.2021 and prosecution has cited 16 witnesses and out of them only 1 witness has been examined so far, as such the trial may take sufficient long time to conclude.

9. Therefore, considering all these circumstances and also the fact that the petitioner is in custody for more than 2 years, 09 months and 9 days

despite the fact that challan was presented way back on 11.10.2021, charges were framed on 09.12.2021, coupled with the rights conferred under Article 21 of the Constitution of India, no purpose would be served by detaining the petitioner any longer in custody.

10. Consequently, without commenting on the merits of the case, the present petition is allowed. The petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of learned Trial Court/Duty Magistrate concerned, if not required in any other case; undertaking to regularly appear on each and every date; not to leave the country without prior permission of the Court; and not to tamper with evidence of prosecution in any manner.

11. It is further made clear that in case the petitioner is found involved in any case under the 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.

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

13. Pending miscellaneous application(s), if any, stand disposed of.

(SANJIV BERRY)

JUDGE

28.02.2024

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