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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-12643-2024
Date of decision : 21.03.2024

SHAMSHADPetitioner

Versus

STATE OF PUNJAB ...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Ruhani Chadha, Advocate
for the petitioner.

Mr. J.S. Arora, DAG, Punjab
ASI Jaswinder Singh.

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.49 dated 23.06.2022 registered for the offences punishable under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Sadar Phagwara, District Kapurthala.

2. Custody Certificate of the petitioner has been filed today in Court. The same is taken on record.
3. The petitioner was driving a Canter accompanied by the owner of the vehicle i.e. Rajesh Kumar co-accused. The vehicle was apprehended which led to recovery of 6000 tablets of Alprasafe-0.5 mg.
4. Counsel for the petitioner submits that the petitioner was merely a driver and the vehicle was owned by co-accused Rajesh Kumar. Rajesh

Kumar has been granted regular bail vide order dated 13th of December, 2023 passed in CRM-M-38306 of 2023 by a Co-ordinate Bench observing as under:

“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.49 dated 23.06.2022, registered under Section 22 of NDPS Act, 1985 (hereinafter referred to as “the Act”) at Police Station Sadar Phagwara, District Kapurthala.

2. Learned counsel contends that the petitioner is in custody for 1 year and about 6 months. He has been falsely implicated in the case. There is non-compliance of mandatory provisions of Sections 42 and 50 of the Act. No independent witness was joined at the time of recovery. Charges had been framed on 09.01.2023, however, none out of 14 prosecution witnesses has been examined. He is not involved in any other case. It is further submitted that the petitioner is suffering from a liver ailment as well as heart problem and his condition is deteriorating day by day.

3. As per custody certificate dated 10.12.2023 has been filed by learned State counsel, the petitioner is behind bars for 1 year, 5 months and 18 days.

4. 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 however unable to controvert the submissions with regard to stage of the case as also the petitioner not being involved in any other case.

5. Heard.

6. 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.

7. Keeping in view the facts and circumstances of the case, in particular that the petitioner is in custody for the last 1 year, 5 months and 18 days; not involved in any other case under the Act; Charges were framed on 09.01.2023; none out of a total of 14 prosecution witnesses 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.

8. 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.

9. 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.

10. 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.”

5. Counsel submits that not only the petitioner is entitled to claim parity *viz-a-viz* Rajesh Kumar rather his case is better than that of Rajesh Kumar. He further submits that the petitioner has undergone incarceration of more than 1 year, 8 months and 29 days and has clean antecedents.

6. State Counsel is not in position to dispute the factual assertions made by counsel for the petitioner based on record.

7. I have heard counsel for the parties and have gone through records of the case.

8. Without commenting on the merits of the case, keeping in view the incarceration already suffered by the petitioner and granting him parity *viz-a-viz* Rajesh Kumar, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

9. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions:

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any with the trial Court.

- (vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cellphone number without permission of the trial Court.
- (vii) The petitioner shall not in any manner try to delay the trial.

10. In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.

11. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

March 21, 2024		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No