



CRM-M-21104-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(224)

CRM-M-21104-2024
Date of Decision : 12.12.2024

Nitish Kumar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Prabhdeep Singh Bindra, Advocate
for the petitioner.

Ms. Avneet, AAG, Punjab.

KULDEEP TIWARI, J.(Oral)

1. This is the first petition, filed under Section 439 Cr.P.C., wherein, the petitioner prays for grant of relief of regular bail in case FIR No.09 dated 12.02.2023 (Annexure P-1), under Sections 20/61/85 of the NDPS Act, 1985, registered at Police Station Kheri Gandian, Patiala.
2. On asking for the relief (supra), learned counsel for the petitioner submits, that as on today, only three prosecution witnesses have been examined, out of total 12 witnesses, as cited by the prosecution, in the final report. He further submits that the petitioner has suffered incarceration of more than 01 year and 09 months, as on today, and he has clean antecedents.
3. In the instant case, the recovery effected from the present petitioner was 03 kg. Charas, which undisputedly falls under the ambit of commercial quantity, as per the schedule attached with the NDPS Act.
4. Though the learned counsel for the petitioner had addressed the arguments on merits of the instant case, to the effect, that some of the



mandatory provisions of the NDPS Act, has not been complied with. However, this Court, refrains itself from making any observation on such submissions.

5. Learned State counsel, on instructions imparted to her from the Investigating Officer concerned, opposed the grant of concession of regular bail to the petitioner, on the ground, that the recovery effected in the instant case, falls under the ambit of commercial quantity, and therefore, the rigor of Section 37 of the NDPS Act, comes into operation.

6. Learned State counsel has also placed on record the custody certificate dated 11.12.2024, qua the petitioner, today in the Court. The same is taken on record.

7. It is not in dispute that only three prosecution witnesses have been examined, out of total 12 witnesses, as cited by the prosecution in the final report, whereas, the petitioner has suffered incarceration of 01 year, 09 months and 27 days, as on today, and has clean antecedents. So far as, the rigor of Section 37 of the NDPS Act, is concerned, this Court, in a number of judgments has already observed that long incarceration would dilute the rigor of Section 37 of the NDPS Act.

8. This Court finds vigor from the judgment of the Hon'ble Supreme Court in ***“Rabi Prakash Versus The State of Odisha”, Special Leave to Appeal (Criminal) No.4169 of 2023***, wherein, the Court has also discussed the effect of Section 37 of the NDPS Act, in such like cases of long custody. The relevant portion of the aforesaid judgment contained in para No.4 is reproduced as under:-

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands



complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

9. In the recent judgment passed by the ***Hon'ble Supreme Court in Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another, 2024 (3) RCR (Criminal), 494***, it has been specifically held that the right to speedy trial of offenders facing criminal charges is implicit in the broad sweep and content of Article 21. The relevant extract of the same reads as under:-

“18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose



the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.”

10. This Court has heard the rival submission of the parties concerned, and is of the view that the instant petition is amenable to be allowed; considering the period of incarceration suffered by the petitioner, stage of the trial; and specifically the fact that the petitioner is not involved in any other case, and has clean antecedents.

11. Keeping in view the facts and circumstances of the case, further incarceration of the petitioner is not warranted at all, at this stage. Accordingly, the instant petition is **allowed**.

12. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of Chief Judicial Magistrate/trial Court/Duty Magistrate, concerned.

13. In case, in future, the petitioner is found to be involved, in such like similar offences, the respondent-State is at liberty, to file an appropriate application for cancellation of the bail granted to the petitioner.

14. However, anything observed hereinabove shall have no effect on the merits of the case and is meant for deciding the present petition only.

(KULDEEP TIWARI)
JUDGE

December 12, 2024

Manpreet

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No