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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-28528-2022
Date of decision:-31.01.2024

RAJDEV SINGH ALIAS RAJA

... Petitioner

Versus

STATE OF PUNJAB

... Respondent

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

Present: Mr. Amaninder Preet, Advocate for the petitioner.

Mr. Harpreet Singh, Addl. AG, Punjab.

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SANJIV BERRY, J. (ORAL)

Learned State counsel has filed custody certificate dated 30.01.2024, the same is taken on record. Copy thereof has been supplied to the counsel opposite.

2. The instant third 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 :-

FIR No.	Dated	Sections	Police Station
79	12.06.2020	21, 25, 29 of the NDPS Act	Bhadaur, District Barnala.

3. In nutshell the case putforth by the prosecution is that on 12.06.2020, ASI Sharif Khan received a secret information and while acting upon the same, accused Rajdev Singh @ Raja and his co-accused Balvir

Singh, who were travelling together were apprehended with 295 grams of heroin along with an amount of Rs.9500/- was recovered from the vehicle.

4. Learned counsel for the petitioner contends that the petitioner is innocent and has been falsely roped by the police in the present case. He contends that the vehicle in question does not belong to the petitioner and he was only travelling with the co-accused, namely, Balvir Singh, who was driving the said vehicle. He further contends that the co-accused of the petitioner, namely, Balvir Singh has been granted concession of bail vide order dated 14.12.2020 (Annexure P-1). He submits that petitioner is custody since 12.06.2020, challan has been presented in Court and keeping in view the long custody, he prays for grant of concession of regular bail to the petitioner.

5. *Per contra*, learned State counsel submits that the petitioner was apprehended at the spot with 295 grams of heroin along with an amount of Rs.9500/- which falls under the category of commercial quantity as such he is not entitled for grant of concession of bail. He, however, has not disputed the stage of trial, Challan has been presented in Court on 02.12.2020, charges have been framed on 29.01.2021 and 15 witnesses have been cited by the prosecution and out of them only 8 witnesses have been examined so far.

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

7. 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.

8. 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.”

9. Admittedly, the petitioner was apprehended at the spot with the alleged contraband lying in the vehicle, which the petitioner was driving. It is not disputed that the petitioner is in custody for more than 3 years and 7 months and 17 days. It is also not disputed that challan has been presented in Court on 02.12.2020, charges have been framed on 29.01.2021 and prosecution has cited 15 witnesses and out of them only 8 witnesses have been examined so far, as such the trial may take sufficient long time to conclude.

10. Therefore, considering all these circumstances and also the fact that the petitioner is in custody for more than 3 years, 07 months and 17 days despite the fact that challan was presented wayback on 02.12.2020, charges were framed on 29.01.2021, 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.

11. 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.

12. 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.

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

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

(SANJIV BERRY)
JUDGE

31.01.2024
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i)	Whether speaking/reasoned?	Yes/No.
ii)	Whether reportable?	Yes/No.