

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of Decision: 19.07.2024

...Respondent

N.S.Shekhawat J. (Oral)

1. The petitioner has moved the present petition under Section 439 Cr.P.C. with a prayer to grant the concession of regular bail to him in case FIR No.245 dated 04.06.2022 under Sections 22/25/61/85 of the NDPS Act registered at Police Station City Barnala, District Barnala.

2. Learned counsel for the petitioner contends that the petitioner was not in the conscious possession of the contraband rather the same had been planted by the police only to falsely involve him in the present case. He further contends that in the present case, the mandatory provisions relating to search and seizure have not been followed by the police and the case of the prosecution lacked independent corroboration. He further contends that the petitioner was arrested in the present case on 04.06.2022 and is continuing in custody for the last more than 02 years and 01 month. While referring to order dated 06.03.2024 (Annexure P-2) passed by a Co-ordinate Bench of this Court,



learned counsel submits that similarly placed co-accused has also been granted the concession of bail by this Court. He refers to paras No. 6, 7 and 8 of the order dated 06.03.2024 (Annexure P-2) passed by a Co-ordinate Bench, which have been reproduced as under:-

“6. Hon'ble The Supreme Court in the case of Maulana Mohd. Amir Rashadi (Supra) had held that, “As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

7. 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.

8. Considering the facts and circumstances of the case, in particular that the petitioner is in custody for last 1 year, 9 months, 1 day; on bail in other case; charges have been framed on 16.12.2022 and out of 14 witnesses, only 4 have 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 NDPS Act can be diluted bearing in mind the rightly to a speedy trial, thus, the present petition for grant of regular bail deserves to be allowed”.

3. On the other hand, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner and submits that the bail petition filed by the petitioner is liable to be dismissed by this Court.



4. I have heard learned counsel for the parties and perused the record.
5. It is not in dispute that similarly placed co-accused Avtar Singh @ Tari has been granted the concession of bail by this Court vide order dated 06.03.2024 (Annexure P-2). Consequently, no purpose will be served by keeping the petitioner behind the bars Moreover, he has already undergone 02 years and 01 month of custody and further custody will not serve any meaningful purpose.
6. In view of the above discussion, without commenting any further on the merits, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate/CJM concerned.

19.07.2024.
hemlata

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No