

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-12462 of 2023(O&M)
Date of Decision: 24.01.2024

Buta Singh
...Petitioner
Versus
State of Punjab
...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Ankur Jain, Advocate
For the petitioner.

Mr. G.S. Sidhu, AAG Punjab.

KARAMJIT SINGH, J.

1. The present petition has been filed by the petitioner seeking grant of regular bail in criminal case having FIR No. 196 dated 07.08.2021, registered under Sections 21(c) and 29 of Narcotic Drugs and Psychotropic Substances Act (for short the NDPS Act) at Police Station City Tarn Taran.
2. The allegations in nutshell are that on 07.08.2021 petitioner and co-accused Harvinder Singh were travelling on a motor cycle which was driven by Harvinder Singh. They were apprehended by the police and 288 grams of heroin was recovered from the conscious possession of the petitioner, while 415 grams of heroin was recovered from conscious possession of aforesaid Harvinder Singh.
3. The counsel for the petitioner, *inter alia*, submits that the petitioner has been falsely implicated in the present case and is in custody for the last more than 02 years and 05 months and that the trial is not progressing ahead as till date only one witness is examined on behalf of the

prosecution. The counsel for the petitioner while placing reliance upon **Satender Kumar Antil Vs. Central Bureau of Investigation, 2022(10) SCC 51**, submits that when there is a long incarceration, which is not attributable to the accused and the delay has been caused by the prosecution, then right of the accused under Article 21 of the Constitution was effected. He also referred to **Mohd. Muslim @ Hussain Vs. State(NCT of Delhi) 2023 AIR Supreme Court 1648** wherein the scope of Section 37 of the NDPS Act vis-a-vis Article 21 of the Constitution of India has been discussed.

4. On the other hand, the State counsel submits that commercial quantity of contraband was recovered from the possession of the petitioner and his co-accused Harvinder Singh by the police. That embargo provided under Section 37 of the Act is applicable in the instant case. It is further submitted that petitioner is having criminal history and that the trial is going on. However, the State counsel on instructions from ASI Manjinder Singh has not disputed the fact that till date prosecution is able to examine only one witness out of total seventeen witnesses on behalf of the prosecution and that the petitioner is in custody for the last more than 02 years and 05 months.

5. I have considered the submissions made by counsel for the parties.

6. No doubt the present case is relating to recovery of commercial quantity of heroin from petitioner and co-accused Harvinder Singh but at the same time the petitioner has already faced incarceration for period of 02 years and 05 months and the trial is going ahead at a snail's pace and till date only one witness is examined on behalf of prosecution out of total

seventeen witnesses. It will take considerable time for the trial to terminate.

It is settled position of law that whatever be the nature of the offence, a prolonged trial against an accused under custody, would be violative of Article 21 of the Constitution and such a long incarceration also dilutes the rigors of Section 37 of the Act. In the given circumstances, no purpose is going to be served by detaining the petitioner in custody for any longer period.

7. In light of the above, without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing of bail bonds and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

24.01.2024

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**(KARAMJIT SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No