

CRM-M-58232-2023

216 IN THE HIGH COURT OF PUNJAB AND HARYANA
 CHANDIGARH

CRM-M-58232-2023 (O&M)
Date of Decision: 31.01.2024

MUSTAQ KHAN

...Petitioner

V/S

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Arshdeep Singh Brar, Advocate
 for the petitioner.

Mr. Sandeep Kumar, DAG Punjab.

HARPREET SINGH BRAR J. (Oral)

1. This is the second petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 229 dated 18.11.2021 registered under Sections 22/61/85 of NDPS Act 1985 at Police Station Baghapurana, District Moga.
2. Present FIR was lodged on the allegations that the Police party was present at Bus Stand village Phulewala on patrolling duty and intercepting the anti-social elements. The investigating officer received secret information that Manpreet Singh @ Manu, Maghar Khan and Mushtaq Khan (petitioner) are engaged in selling the intoxicant tablets and today they are coming from village Samadh Bhai to village Phulewala for selling intoxicant tablets to their customer and if raid is conducted, they can be apprehended at the spot. On the basis of secret information, trap was laid and petitioner was arrested with conscious possession of 1100 tablets of Tramadol Hydrochloride.
3. Learned counsel for the petitioner *inter alia* contends that the

petitioner has approached this Court earlier as well and the first petition seeking regular bail was dismissed as withdrawn on 06.07.2023 and in spite of passing of 06 months, the trial of the case has not made any progress. The petitioner is behind the bars for the last more than 02 years and 02 months and out of 11 prosecution witnesses, only 04 have been examined so far and he is not involved in any other case.

4. Per contra, learned State counsel opposes the prayer of grant of regular bail to the petitioner on the ground that a huge quantity of contraband falling under the ambit of commercial quantity has been recovered from the conscious possession of the petitioner and as such he is not entitled for grant of regular bail.

5. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 22.11.2021. Culpability, if any, would be determined at the time of the trial.

6. The foundational concept of the criminal jurisprudence is to ensure speedy trial. The Hon'ble Supreme Court has repeatedly reiterated that right to speedy trial is enshrined in Article 21 of the Constitution of India. Speedy trial would cover investigation, enquiry, trial, appeal, revision and retrial etc. i.e. everything starting with the accusation against the accused and expiring with the final verdict of the last court.

7. It has further been held in law that if a person is deprived of his liberty under a procedure which is not reasonable, fair, or just, such deprivation would be violative of his fundamental right under Article 21 of the Constitution of India. The procedure so prescribed must ensure speedy trial for determination of the guilt of such person. Some amount

of denial of personal liberty cannot be avoided, but if the period of deprivation pending trial becomes excessively long, the fairness guaranteed by Article 21 of the Constitution of India would come into play and it would prevail over the embargo created by Section 37 of the NDPS Act.

8. In this regard, reference is being made to the law laid down by the Hon'ble Supreme Court in the context of right to speedy trial under Article 21 of the Constitution of India on the following decision:- **Akhtari Bi Vs. State of M.P., (2001) 4 SCC 355, Surinder Singh Alias Shingara Singh vs. State of Punjab, (2005) SCC (Crl) 1674, P. Ramachandra Rao vs. State of Karnataka, (2202) 4 SCC 578, Babu Singh and others vs. State of U.P., (1978) 1 SCC 579, Takht Singh and others vs. State of M.P., (2001) 10 SCC 463; Special Leave to Appeal (Crl) No.2356 of 2010, Kushal Singh vs. State of U.P. (2JJ.) and Fazal vs. State of Uttar Pradesh, (2012) 5 SCC 752.**

9. The Hon'ble Supreme Court has recently in **Mohd. Muslim Hussain Vs. NCT 2023 AIR (SC) 1648** has concluded as follows:-

"....grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 463A which is applicable to offence under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.....

Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are

overcrowded and their living conditions, more often than not, appalling.....”

10. The present petition seeking regular bail to the petitioner is allowed solely on the ground of long custody already undergone by him and without commenting on the merits of the case lest it may prejudice the outcome of the case pending before the trial Court.
11. In view of the above, the present petition is allowed and the petitioner- Mustaq Khan is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.
12. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

31.01.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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