

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

203

CRM-M-60733-2023
Date of Decision:02.05.2024

Gola @ Gohla

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON’BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. T.P.S. Makkar, Advocate,
for the petitioner.

Mr. Arun Gupta, DAG, Punjab

AMAN CHAUDHARY J. (Oral)

1. Prayer in the present petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in FIR No.0047 dated 05.04.2023 registered under Sections 22(b) of NDPS Act, at Police Station City Malout, District Sri Muktsar Sahib.
2. Learned counsel contends that the petitioner has been in custody for more than 10 months, when Coordinate Bench on 09.02.2024, granted her interim bail. She has been falsely implicated in the case. The mandatory provisions of Sections 42 and 50 of NDPS Act were not complied with. There has been no allegations against her of having misused the interim bail or of threatening or influencing the witnesses. She is not involved in any other case under NDPS Act. Out of 16 witnesses, 3 stand completely examined, 3 partly and 7 have been given up.

3. Status report as well as the custody certificate dated 30.04.2024 and 12.04.2024 respectively, filed by learned State counsel are taken on record, as per which, the petitioner is behind bars for 10 months and 14 days.

4. Learned State counsel opposes the bail on the ground that commercial quantity of contraband was recovered from the petitioner, who was apprehended at the spot. However, he is unable to controvert the submissions with regard to the stage of trial, her non-involvement in any other case under NDPS Act and has not misused the concession of interim bail granted to her.

5. Heard.

6. 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 case 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. 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.

7. Considering the facts and circumstances of the case, in particular that

the petitioner has remained in custody for 10 months and 14 days; has been on interim bail for about 3 months, during which there is no allegations of having misused the same; not involved in any other case under NDPS Act; charges have been framed on 27.07.2023 and out of 16 witnesses, so far only 3 stand completely examined, 3 partly and 7 given up; the trial is likely to take a considerable time, thus further incarceration of the petitioner would be violative of her 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 right to a speedy trial, thus, the present petition for grant of regular bail deserves to be allowed.

8. As a result, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to her furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate concerned and subject to her not being required in any other case. The petitioner shall abide by the following conditions:-

- (i) The petitioner will not tamper with the evidence during the trial.
- (ii) The petitioner will not pressurize/ intimidate the prosecution witnesses.
- (iii) The petitioner will appear before the trial Court on each and every date fixed, unless is exempted by a specific order of Court.
- (iv) The petitioner shall not commit an offence similar to the offence of which she is an accused, or for commission of which she is suspected of.
- (v) The petitioner shall not directly or indirectly coerce, induce, threaten or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer or tamper with the evidence in any manner.
- (vi) The petitioner shall not in any manner misuse her liberty.
- (vii) The petitioner shall furnish her address and mobile number to the Trial Court forthwith and shall not change the same till the conclusion of the trial and in case for any reason, the petitioner seeks to change any of the aforesaid, the same shall be done only with prior intimation to the learned Trial Court, stating the reason for the same.
- (viii) The petitioner shall not leave the country without prior permission of the trial Court.
- (ix) The trial Court/Duty Magistrate may impose any other condition, as deemed appropriate while releasing the petitioner.

9. It is made abundantly clear that in case there is any breach of the aforesaid conditions, the State shall be at liberty to seek cancellation of bail as granted to the petitioner by this order.

10. In view of the above, it is clarified that the observations made herein are limited for the purpose of present proceedings and would not be construed as an opinion on the merits of the case and the trial would proceed independently of the aforesaid observations.

(AMAN CHAUDHARY)
JUDGE

May 02, 2024
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Whether speaking : Yes/No

Whether reportable : Yes/No