



NDPS S. 15, 29, 37 - CrPC S. 439 - Commercial quantity - Regular bail - Petitioner is in custody for last 1 year and 10 days; out of a total of 18 prosecution witnesses, none has been examined - Further incarceration would be violative of his right enshrined under Article 21 of the Constitution of India. [ID#430771]

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2024 PLRonline 15 = (2024-3)215 PLR 129 (SN) = [ID#430771]

Punjab and Haryana High Court

Before: Aman Chaudhary, J.

Rashid Hussain Thoker - Petitioner

Versus

State of Punjab - Respondent

CRM-M-42847 of 2024

04.10.2024

Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), Section 15, 29, 37 - Criminal Procedure Code, 1973 (2 of 1974), Section 439 — Commercial quantity - Regular [bail](#) - Petitioner is in custody for last 1 year and 10 days; out of a total of 18 prosecution witnesses, none has been examined so far; the trial is likely to take a considerable time, thus his further incarceration 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 right to a speedy trial, thus, the present petition for grant of regular bail deserves to be allowed. [Para 8, 9]

Cases referred:

1. Amani Fidel Chris vs. Narcotics Control Bureau, Crl. Appeal No.1027 of 2015, decided on 13.03.2020.
2. Poonam Devi Rao vs. State of Punjab, CRM-M-32287-2021, decided on 31.08.2022.
3. Didar Singh @ Kaddu vs. State of Punjab, CRM-M48517-2022, decided on 12.09.2023.
4. Maulana Mohd. Amir Rashadi vs. State of U.P. and others, 2012(2) SCC 382.
5. Dheeraj Kumar Shukla vs. The State of Uttar Pradesh, SLP (Criminal) No.6690/2022 decided on 25.01.2023.
6. Bhupender Singh vs. Narcotic Control Bureau (2022) 2 RCR (Crl.) 706.
7. Munasi Masih vs. State of Punjab, CRM-M-31504-2022, decided on 06.02.2023.

Mr. Ruhani Chadha, [advocate](#) for the petitioner. Mr. Manipal Singh Atwal, DAG, Punjab.

AMAN CHAUDHARY, J. (ORAL) - Prayer in the present petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case [fir](#) No.81, dated 14.06.2022, registered under Sections 15 and 29 of the NDPS Act, 1985 at Police Station Maqsudan, District Jalandhar.

2. Learned counsel contends that the petitioner is in custody for more than 1 year. The alleged recovery from him alongwith co-accused Tarik Ashraf, who were travelling in a car driven by him, is 2 Kgs of poppy husk, which is non-commercial in nature. Thereafter, based on their confessional statements on 18.06.2022, 20 bags

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of 25 Kg each of poppy husk were got recovered from under a bridge, wherefrom 2 samples of 500 grams each were taken at the time of preparing the inventory instead of from each bag as per the procedure. In this regard, reliance is placed upon the [judgment](#) of the Delhi High Court in Amani Fidel Chris vs. Narcotics Control Bureau, Crl. Appeal No.1027 of 2015, decided on 13.03.2020, wherein 8 polythene bags were recovered and 2 samples were drawn and the appellant was acquitted on the ground that the result of such chemical examination was doubtful with regard to the entire contraband recovered. He also relies on the case of Poonam Devi Rao vs. State of Punjab, CRM-M-32287-2021, decided on 31.08.2022, wherein bail was granted by relying on the aforesaid judgment as also on the standing order No.1/88 dated 15.03.1988 issued by NCB providing number of samples to be drawn in each seizure case and the observations made were that the contraband recovered from 26 polythene bags was not made homogenous by mixing it properly so as to collect the representative samples from the same, against which SLP (Crl) @ Dairy No.5709/2023 filed by the State of Punjab, was dismissed vide order dated 27.02.2023. The aforesaid order was followed in Didar Singh @ Kaddu vs. State of Punjab, CRM-M48517-2022, decided on 12.09.2023, wherein also this Court granted the bail on the same premise. Charges were framed on 08.04.2024. However, none out of 18 prosecution witnesses has been examined. The petitioner is involved in two more cases under the NDPS on the basis of disclosure statement wherein no recovery has been effected pursuant to his [arrest](#) and in one of which he was granted bail by the High Court of Jammu & Kashmir and Ladakh, vide order dated 10.07.2024. Relies on the judgment of Hon'ble The Supreme Court in Maulana Mohd. Amir Rashadi vs. State of U.P. and others, 2012(2) SCC 382.

3. The custody certificate dated 30.09.2024, as per which, the petitioner is behind bars for 1 year and 10 days and status report by way of an affidavit of Surinder Pal, PPS, Deputy Superintendent of Police, Sub Division, Kartarpur, Jalandhar, have been filed by the learned State counsel, which is taken on record.

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 and is involved in two more FIRs. He is however unable to controvert the submissions made regarding stage of the case, the petitioner being on bail in one of the cases.

5. Heard.

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 a 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. 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 under 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



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year and 10 days; is on bail in other case; charges were framed on 08.04.2024; out of a total of 18 prosecution witnesses, none has been examined so far; the trial is likely to take a considerable time, thus his further incarceration 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 right to a speedy trial, thus, the present petition for grant of regular bail deserves to be allowed.

9. As a result, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate concerned and subject to his 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, he is an accused, or for commission of which he 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 his liberty.
- (vii) The petitioner shall furnish his 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.

10. 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.

11. 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.

Tags: [\(2024-3\)215 PLR 129](#), [\[ID#430771\]](#), [Bail](#), [CrPC S. 439](#), [Justice Aman Chaudhary](#), [NDPS S. 15](#), [NDPS S. 29](#), [NDPS S. 37](#), [Rashid Hussain Thoker](#)