

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

211

CRM-M-39557-2020

Date of Decision:12.03.2021

ASHUTOSH KUMAR

...PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Nikhil Kumar, Advocate for the petitioner.

Mr. Amit Mehta, Senior DAG, Punjab.

SUVIR SEHGAL, J.(ORAL)

This is the second petition filed under Section 439 of Cr.P.C. for grant of regular bail in case FIR No.77, dated 13.06.2019 registered under Section 21 of the NDPS Act, 1985, at Police Station Satnampura, Phagwara, District Kapurthala, Punjab. The first petition was dismissed as withdrawn after arguments on 18.08.2020.

FIR was registered on the allegation that the petitioner has been apprehended and found to be in possession of 1235 capsules of tramadaol weighing 743.37 grams.

Counsel for the petitioner has argued that the prosecution has failed to find the source of contraband. He urges that trial is being unnecessarily delayed and the evidence of the Investigating Officer has not been recorded. It is his submission that despite issuance ofailable warrants to secure the presence of the Investigating Officer, he has not appeared for recording of his statement.

Per contra, State counsel has opposed the petition, upon instructions from ASI Tarsem Singh. He has filed custody certificate dated

11.03.2021, which is taken on record. He submits that the statement of Gurmail

Singh, Investigating Officer, has been recorded in February, 2021, and the trial is now fixed for 22.03.2021 for examination of the remaining prosecution witnesses.

I have considered the rival submissions of the parties.

Heavy quantity of contraband has been recovered from the person of the petitioner, which falls within the ambit of commercial quantity as laid down in the notification issued under the provisions of the NDPS Act. The bar under Section 37 of the NDPS Act is applicable.

Counsel for the petitioner has not been able to point out any change in the fact, situation or circumstance, which has taken place after the dismissal of the first petition. Without there being any change, the second petition would be deemed as seeking review of the earlier judgment, which is not permissible in criminal law as held by the Hon'ble Supreme Court in **Hari Singh Mann Vs. Harbhajan Singh Bajwa (2001) 1 SCC 169; State of Madhya Pradesh Vs. Kajad, 2001 SCC (Criminal) 1520 and State of Maharashtra Vs. Capt.Buddhikota Subha Rao 1989 Supl. (2) SCC 605.**

Accordingly, this second petition for grant of regular bail to the petitioner is dismissed.

It is clarified that any observation made hereinabove shall not be construed to be an expression of opinion on the merits of the case.

12.03.2021
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No