

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH
(213)**

**CRM-M-5642-2021
Date of decision:- 25.01.2022**

Balwinder Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Kuljit Singh Bal, Advocate
for the petitioner.

Mr. C.L.Pawar, Senior D.A.G., Punjab.

...

SUVIR SEHGAL, J. (ORAL)

Heard through video conferencing.

This is the third petition filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.32 dated 10.06.2019 registered for offence under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the Act”) at Police Station Kacha Pacca, Tarn Taran, Annexure P-1.

FIR came to be registered after a recovery of 2000 tablets of Covidol-100-SR (Tramadol Hydrochloride) was effected and the petitioner was arrested on 10.06.2019.

Counsel for the petitioner contends that the recovery was not effected from the petitioner and a perusal of the FIR shows that the allegation is that when the petitioner saw the police party, he placed the

polythene bag on the road and hid himself behind a shop. He argues that the petitioner was released on interim bail as FSL report was awaited. He asserts that though the quantity recovered from the petitioner falls within the ambit of commercial quantity, yet the trial is not progressing and the petitioner is suffering incarceration for the last more than two years. He submits that the previous bail petition was withdrawn on 07.10.2020.

Per contra, upon instructions, learned State counsel has opposed the petition on the ground that the rigor of Section 37 of the Act is attracted. He has filed custody certificate dated 24.01.2022, on the basis of which, he is not in a position to dispute that the petitioner does not have any other criminal case against him. Upon further instructions, he submits that the challan was presented on 03.12.2019, charge was framed on 13.02.2020 and three out of eleven prosecution witnesses have been examined.

I have considered the respective submissions of counsel for the parties.

After noticing the bar under Section 37 of the Act, Hon'ble Supreme Court in ***Union of India Versus K.A.Najeeb 2021 (2) RCR (Criminal) 145*** has held that once timely trial is not possible, the Court is obligated to release the accused, who is in custody for extended period of time, on bail. In ***Criminal Appeal No.245 of 2020 (SLP Criminal No.8823 of 2019) titled as Chitta Biswas @ Subhas Versus The State of West Bengal***, the apex Court ordered the release of the accused on bail in a case involving commercial quantity of contraband, after he had undergone more than two years of custody taking into account the stage of the trial.

Without examining the merits, keeping in view the above circumstances and considering the fact that the petitioner, who has clean antecedents, has undergone a custody of more than two years and three months, he did not misuse the concession of interim bail granted to him, the trial is still at the initial stage and will take time to conclude, the petitioner is ordered to be released on bail on furnishing heavy bail/surety bonds to the satisfaction of the Illaqa Magistrate/Duty Magistrate concerned. The Court may also impose any other condition it deems appropriate to ensure that the petitioner does not commit any default.

Petition is allowed.

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

(SUVIR SEHGAL)
JUDGE

25.01.2022
Kamal

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