

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

CRM-M-8005-2021 (O&M).

Date of Decision: 29.09.2022.

Sarwan Singh

....Petitioner.

Versus

State of Punjab

....Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Gurpal Singh Sandhu, Advocate for the petitioner.

Mr. Dhruv Dayal, Additional Advocate General, Punjab.

Lalit Batra, J.

This second petition under Section 439 Cr.P.C. for grant of regular bail has been moved by petitioner-**Sarwan Singh** in case FIR No.50 dated 30.06.2019 under Sections 22 and 29 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (hereinafter referred to as 'the Act') and Section 489 IPC added lateron, registered at Police Station Valtaha, District Tarn Taran.

Learned counsel for the petitioner *inter alia* contends that the allegations levelled against the petitioner are totally concocted, false and frivolous and there is no iota of truth therein. He further urges that allegedly 875 intoxicant tablets without label were recovered from the seat of motorcycle, which was allegedly driven by co-accused Harpal Singh @ Bhappa and the petitioner has been shown to be pillion rider of said vehicle. He further urges that Form-29 was not prepared at the spot and even CFSL Form was not prepared at the spot and further there is a delay of two days in

sending the sample parcel for FSL examination. He further urges that provisions of Section 42 of the Act were not complied with. He further urges that no personal search of the petitioner and co-accused was conducted by the Gazetted Officer/Magistrate and no consent memo was prepared by the Investigating Officer and as such there was non-compliance of the provisions of Section 50 of the Act. He further submits that nothing has been recovered from the petitioner and as a matter of fact he was picked up from his house and as such he was not arrested in the manner as alleged. He further urges that petitioner is neither owner of motorcycle in question nor ownership of said motorcycle has been verified till date. He further urges that no independent witness was joined by the Investigating Agency in the present case. He further urges that petitioner is not involved in any other case of similar nature. He further urges that petitioner is aged about 76 years and is suffering from various chronic ailments. He further urges that petitioner was arrested in this case on 30.06.2019 and he was granted interim bail till receipt of report of the Chemical Examiner, by learned Special Judge, Tarn Taran, vide order dated 20.08.2019 (Annexure P-1). He further urges that after receipt of FSL report, petitioner was taken into custody on 03.01.2020 and since then he is languishing in custody. He further urges that after completion of investigation, final report as envisaged under Section 173 Cr.P.C. (*Challan*) has already presented in the Court, but no witness has been examined by the prosecution till date. He further urges that since trial of the case would take sufficient time to conclude, no useful purpose would be served by keeping the petitioner in custody further and he may be released on bail.

On the other hand, learned State counsel while opposing instant petition has vehemently argued that contraband (126 grams Alprazolam) recovered from the possession of the petitioner and co-accused falls within 'commercial quantity', thus, in view of bar created by Section 37 of the Act, petitioner does not deserve the concession of bail.

I have heard learned counsel for the parties and have carefully gone through the record of the case.

Allegedly, contraband (126 grams of Alprazolam) was recovered from the seat of motorcycle being driven by co-accused Harpal Singh @ Bhappa, whereas allegedly petitioner was travelling as pillion rider on the said vehicle.

Hon'ble Supreme Court, vide order dated 01.08.2022 passed in **Special Leave to Appeal (Crl.) No.5769/2022** titled **Nitish Adhikary @ Bapan vs. The State of West Bengal**, has granted bail to accused having undergone custody of 01 year and 07 months stating that trial is at preliminary stage as only one witness has been examined.

At this stage, without commenting anything on the merits of the case, the fact that petitioner remained in custody w.e.f. 30.06.2019 to 20.08.2019; that after receipt of FSL report, he is languishing in custody since 03.01.2020; that though trial has commenced but till date not even a single witness has been examined by the prosecution and that since trial of the case would take sufficient time to conclude, no useful purpose would be served by keeping the petitioner in custody further, thus, he deserves the concession of bail.

In view of above, instant petition for grant of regular bail moved by petitioner-**Sarwan Singh** is allowed and he is ordered to be released on bail on his furnishing personal bond and surety bond to the satisfaction of Trial Court/Chief Judicial Magistrate/Duty Magistrate, Tarn Taran, as the case may be.

(LALIT BATRA)
JUDGE

29.09.2022
jitender

Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No