

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRM-M No.19909 of 2022 (O&M)
Date of Decision.05.07.2022

Nirmal Singh

...Petitioner

Vs

State of Punjab

...Respondent

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. P.S. Sekhon, Advocate
for the petitioner.

Mr. Pawan Sharda, Sr. DAG, Punjab.

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JAISHREE THAKUR J. (ORAL)

This is a third petition that has been filed for grant of regular bail to the petitioner in FIR No.287 dated 28.09.2019 registered under Section 22 of the NDPS Act, 1985 at Police Station Bhiwanigarh, District Sangrur.

Learned counsel appearing for the petitioner would contend that there is an alleged recovery of 3500 tablets of Tramadol Hydrochloride and 900 tablets of Alprazolam. The commercial quantity for Tramadol Hydrochloride would be 250 gms and 100 gms for Alprazolam. It is argued that though there is a bar under Section 37 of the NDPS Act for granting regular bail but there are special circumstances, which should be taken into consideration in this case. It is further argued that the petitioner is a first time offender and has been in custody for a period of 2 years 10 months and the trial is not proceeding, despite several opportunities having been given to the prosecution to examine witnesses.

Learned counsel for the petitioner relies upon zimni orders from 31.03.2021 till 01.06.2022, a perusal of which reflects that despite service having been effected upon the official witnesses, they are not turning up.

Initially,ailable warrants had been issued but as they did not appear, they were summoned through non-ailable warrants for 18.11.2021, again summoned (even throughailable/non-ailable warrants) for 10.12.2021, 04.01.2022, 19.01.2022, 07.02.2022, 28.02.2022, 14.03.2022, 01.04.2022, 22.04.2022, 11.05.2022, 01.06.2022 and now for 06.07.2022. He further relies upon the judgment passed by the Hon'ble Supreme Court passed in Criminal Appeal No.245 of 2020 titled as *Chitta Biswas alias Subhas Vs. The State of West Bengal* decided on 07.02.2020 as well as the judgment passed by a Coordinate Bench of this Court in CRM-M No.20177 of 2020 titled as *Vipan Sood Vs. State of Punjab and another* decided on 25.02.2021, which stood affirmed in SLP preferred before the Hon'ble Supreme Court, wherein *de hors* of the stringent provisions of Section 37 of the NDPS Act, regular bail had been granted to the accused therein on the length of custody period.

Learned counsel appearing on behalf of the respondent-State opposes grant of regular bail to the petitioner by contending that recovery effected from the petitioner under the NDPS is of commercial quantity and therefore, he is not entitled to regular bail.

I have heard learned counsel for the parties and have perused the paper book. A perusal of the zimni orders reflects that the prosecution does not seem to be serious in securing presence of the witnesses and examine them in order to conclude the trial expeditiously. There are several orders available reflecting thatailable/non-ailable warrants have been issued to secure presence of official respondents and despite the same, there is non-appearance which is resulting in unnecessary delay. In these exceptional circumstances and keeping in the view judgments referred to above, the instant petition stands allowed and the petitioner is ordered to be released on regular bail on execution

of adequate personal/surety bonds to the satisfaction of the concerned trial court/Duty Magistrate. However, any observation made herein shall not be construed to be an expression on merits of the case. While allowing this petition, it is made clear that this order will not be used as a precedent in other matters.

July 05, 2022

Pankaj*

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No

(JAISHREE THAKUR)

JUDGE