

CRM-M-24302-2022

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

**CRM-M-24302-2022
Date of decision: 25.08.2022**

Shiva @ Sheru

...Petitioner

Versus

U.T. Chandigarh

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Rakesh Mohan Jain, Advocate,
for the petitioner.

Mr. Anil Kumar Lamdharia, APP, U.T. Chandigarh.

HARNARESH SINGH GILL, J. (ORAL)

Custody certificate of the petitioner, by way of affidavit of the Addl. Superintendent, Model Jail, Chandigarh, has been filed in the Court today. The same is taken on record.

Through this petition, the petitioner seeks regular bail in case FIR No.108 dated 19.08.2020, registered at Police Station Sector 11, Chandigarh, under Sections 21 and 22 NDPS Act.

Learned counsel for the petitioner contends that the petitioner has falsely been implicated in the present case; that false recovery of intoxicating injections and contraband had been planted upon him; that provisions of Section 50 NDPS Act had not been complied with; that the petitioner has been in custody since 19.08.2020 and that some of the

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prosecution witnesses are yet to be examined. On this premise, learned counsel prays for the grant of bail to the petitioner.

On the other hand, learned State counsel, while opposing the grant of bail to the petitioner, submits that the extent of intoxicating injections recovered from the petitioner, falls under the 'commercial quantity' and Section 37 NDPS Act bars the grant of bail to the accused in case of 'commercial quantity'.

I have heard the learned counsel for the parties.

As per the prosecution version, recovery of 12 injections of Buprenorphine IP 2 ml. each and 10 injections of Pheniramine Maleate IP 10 ml. each and 5.60 gram of smack had been recovered from the petitioner.

Indisputably, the extent of intoxicating injections recovered from the petitioner, falls under the category of 'commercial quantity'. Section 37 NDPS Act bars the grant of bail to the accused in case of 'commercial quantity'. The liberal approach in granting bail in cases under the NDPS Act, is uncalled for.

The Hon'ble Supreme Court, in Criminal Appeal No.1001-1002 of 2022, titled as 'Narcotics Control Bureau Vs. Mohit Aggarwal', decided on 19.07.2022, has held that length of the period of custody of the accused or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the accused under Section 37 NDPS Act.

Moreover, a perusal of the custody certificate would show that

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the petitioner is involved in ten other cases, including two cases of similar nature. It also shows that the petitioner has the tendency of committing repeated crime(s) of similar nature.

It is not denied for a moment that the period of custody is a relevant factor, but simultaneously the totality of the circumstances and the criminal antecedents are also to be weighed. Keeping in view the criminal antecedents of the petitioner, the period of custody of about 02 years, in my considered opinion, melts into insignificance. Still further, having had his complicity in the repeated offence of similar nature, the petitioner cannot seek the concession of regular bail, which of course, if granted would pave a way to him to involve himself in another similar offence.

Considering the same, at this stage, no justifiable ground is made out to extend the concession of regular bail to the petitioner.

Consequently, the present petition stands dismissed.

25.08.2022

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No