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

CRM-M-28802-2021 (O&M)

Date of Decision: 07.12.2022

RAJESH KUMAR

.... Petitioner

Versus

STATE OF PUNJAB

.... Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Sandeep Kumar Passi, Advocate, for the petitioner.

Mr. Mohit Kapoor, Additional Advocate General, Punjab.

JAISHREE THAKUR.J (Oral)

CRM-10769-2022

Application is allowed, as prayed for.

Documents Annexure P-3 and P-4 are taken on record subject to
all just exceptions.

CRM-47130-2022

Application is allowed, as prayed for.

Documents Annexure P-5 to P-9 are taken on record subject to
all just exceptions.

CRM-M-28802-2021

1. This is a petition that has been filed under Section 439 Cr.P.C.
for grant of regular bail, pending trial, to the petitioner, who is in custody in
case FIR No.209, dated 27.08.2019 registered under Section 22 of the NDPS
Act, 1985 (Section 27-A lateron) at Police Station City Faridkot, District
Faridkot.

2. Counsel appearing on behalf of the petitioner would contend that the petitioner has been falsely implicated in the aforesaid FIR with a false recovery of 2555 intoxicant tablets of different brands, allegedly shown recovered from his shop and further 65845 intoxicant tablets, 119 injections, 30 vials and drug money of Rs.87,59,000/- and 89 grams of gold with a counting machine from his house. It is submitted that in fact the petitioner was running a medical store under the name and style of M/s Friends Medical Agency at Faridkot and had a licence for the firm, which licence was valid from 31.05.2018 till 30.05.2023 and, therefore, on account of having a valid licence, the petitioner was stocking the medical supplies and tablets. He had made valid purchase of the said tablets. It is argued that some of the tablets that had been seized, had already expired and, therefore, the same could not have been taken into account.

3. Apart from that, the main contention raised by the counsel for the petitioner is that the petitioner has been in custody since 27.08.2019 and after investigation, challan has been presented and charges framed on 20.02.2020. Out of 40 witnesses cited by the prosecution, as on date, only one witness stands examined. It is further argued that the trial is not proceeding and, therefore, by virtue of the length of custody, the petitioner ought to be allowed regular bail. It is contended that the Supreme Court in matters of the length of custody and the trial not proceeding, has allowed regular bail to the accused even under the provisions of the NDPS Act. It is submitted that following the judgments as rendered by the Apex Court, Co-ordinate Benches of this Court have allowed regular bail by taking into account the length of incarceration and the fact that the trial is not

proceeding. He would rely upon various judgments of this Court in this regard viz. *CRM-M-37235 of 2022 Sandeep Singh @ Sunny Versus State of Punjab, decided on 18.10.2022*; *CRM-M-51308-2021 Bohar Singh Versus State of Punjab, decided on 14.10.2022*; *CRA-S-2333-SB-2017 Sandeep Kumar Versus State of Punjab, decided on 18.05.2019*; *CRM-M-52976-2019 Magh Singh @ Mangu Versus State of Punjab, decided on 28.09.2021*; *CRM-M-33555 of 2021 Mintu Versus State of Haryana, decided on 23.08.2022*. He would also rely upon the judgments of Hon'ble Supreme Court in *Criminal Appeal No.245 of 2020 Chitta Biswas @ Subhas Versus State of West Bengal, decided on 07.02.2020, Special Leave to Appeal (Criminal) No.5530 of 2022, Mohammad Salman Hanif Shaikh Versus State of Gujarat, decided on 22.08.2022*, etc.

4. On the other hand, learned counsel appearing on behalf of the respondent-State would oppose the regular bail by contending that the petitioner herein, though had a licence, was storing intoxicant tablets over and above what he was permitted to do so. It is also submitted that the petitioner is a habitual offender and has several cases pending against him.

5. A perusal of police file would reflect that there had been five hearings after the framing of the charge and only one witness has been examined.

6. Taking note of the arguments raised about the length of custody, the judgments rendered by the Supreme Court and the Co-ordinate Benches of this Court, referred to above, which have allowed regular bail and even in the face of rigor of Section 37 of the NDPS Act, keeping the petitioner in further incarceration would not be justifiable considering the fact that out of

40 witnesses cited only one witness has been examined so far. Thus, this Court deems it appropriate to release the petitioner on regular bail.

7. Accordingly, the instant petition is allowed and the petitioner is directed to be released on regular bail on his execution of personal bond in the sum of Rs.5 lakhs with one surety of same amount to the satisfaction of concerned trial Court/Duty Magistrate. However, the petitioner shall abide by the following conditions:-

- i) He will not tamper with the evidence during the trial;
- ii) He will not pressurize/intimidate the prosecution witness(es);
- iii) He will appear before the trial Court on the date fixed, unless personal presence is exempted;
- iv) He shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected;
- v) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

8. The observations made hereinabove shall not be construed as an expression on the merits of the case and the trial court shall decide the case on the basis of available material.

(JAISHREE THAKUR)
JUDGE

07.12.2022

sanjeev

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No