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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-33539-2022

Date of Decision: 05.08.2022

Mohd. AshrafPetitioner

Versus

State of Punjab..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

...

Present: Mr. Fariad Singh Virk, Advocate
for the petitioner.

Ms. Akshita Chauhan, AAG, Punjab.

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MANJARI NEHRU KAUL, J. (Oral)

This is fifth petition under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in FIR No. 298 dated 13.10.2019 under Sections 22, 25, 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 and Section 207 of the M.V. Act, registered at Police Station Bhawanigarh, District Sangrur.

Learned counsel for the petitioner submits that the previous petition though was dismissed on 15.12.2021 but specific directions had been issued to the trial court for expediting the trial and conclude it within 6 months, in the wake of the long judicial incarceration of the petitioner, however, the trial had not yet concluded. Learned counsel while inviting the attention of this court to the zimni orders, which have been annexed as Annexures P3 to P12, submits that it clearly stood revealed therein that the

putting in appearance despiteailable warrants issued to secure the presence of some of them. He submits that only 03 prosecution witnesses out of the 14 prosecution witnesses cited stand examined till date even though the petitioner has been in custody now for nearly 03 years having been arrested on 23.10.2019. Learned counsel submits that as per the allegations levelled in the FIR, the petitioner along with co-accused Karamjeet Singh was apprehended with 5000 tables of Clovidol 100 SR containing salt Tramadol Hydrochloride. He submits that on the face of it, it is a case of false implication as the petitioner has clean antecedents, is not involved in any other case, much less under the NDPS Act coupled with the fact that though it was the case of the prosecution that pursuant to secret information received the accused had been apprehended, however, strangely the investigating agency had not even made any efforts to join an independent witness. Learned counsel has placed reliance upon the judgment of the Supreme Court in *Amit Singh Moni v. State of Himachal Pradesh* (Crl. Appeal No. 668 of 2020 decided on 12.10.2020) wherein the accused in a case under the NDPS Act was extended the concession of bail on the ground of his long incarceration.

Per contra, the learned State counsel while opposing the submissions and prayer made by the counsel opposite, on instructions from HC Sukhvinder Singh, submits that the recovery of the contraband falls under the commercial quantity and hence the petitioner be not extended the concession of bail. However, she has not been able to controvert that it is on account of the prosecution witnesses, who admittedly are all official witnesses, not stepping into the witness box despiteailable warrants having been issued to secure their presence, that the trial has not been able

to make much headway. She has also not disputed that the petitioner is not involved in any other criminal case much less under the NDPS Act.

I have heard the learned counsel for the parties and perused the relevant material on record.

This is yet another case where on account of the prosecution witnesses, who admittedly are official witnesses, not turning up before the trial court, the trial has been delayed. In the circumstances the petitioner cannot be left languishing for an indefinite period in judicial custody during the pendency of a trial for reasons not attributable to him. It needs to be reiterated that the right to life and personal liberty granted by the Constitution of India also covers the right to speedy trial. Eleven prosecution witnesses remain to be examined. The petitioner as already noticed earlier and conceded by the learned State counsel has been in custody for almost 03 years and is not involved in any other criminal case, hence, this court deems it fit to allow the petition. The petitioner is admitted to bail to the satisfaction of trial Court/Duty Magistrate. However, it is made clear that any observation made herein shall not be construed as an expression of opinion on the merits of the case.

05.08.2022

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(MANJARI NEHRU KAUL)
JUDGE

Note: Whether speaking/reasoned
Whether Reportable:

Yes / No
Yes / No