

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

CRM-M-37304-2022

Date of Decision:-29.08.2022

Wazir Singh @ Ziri.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. O.P. Kamboj, Advocate for the Petitioner.

Mr. Hakam Singh, Assistant Advocate General, Punjab.

JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this petition under Section 439 Cr.PC is for the grant of regular bail in case FIR No.68 dated 17.06.2019 under Sections 22 of NDPS Act and Section 29 of NDPS Act added later on registered at Police Station City Fazilka, District Fazilka.

Briefly, as per the allegations of the prosecution, Abhishek Sharma along with the petitioner-Wazir Singh were travelling on a motor cycle and on seeing the police party they threw a bag from which 3400 tablets of Clovidol were recovered. As per the report of the FSL, Tramadol Hydrochloride was found in the contents of the tablets.

The Counsel for the petitioner *inter alia* contends that the petitioner is in custody for more than 03 years and 02 months and only 02 witnesses out of the 13 cited prosecution witnesses have been examined so

far. He is not involved in any other case and despite the prosecution already having availed more than 20 opportunities to produce its evidence, only 02 out of the 13 witnesses have been examined so far. He contends that the co-accused of the petitioner, namely, Abhishek Sharma has been granted the concession of bail by this Court vide order dated 27.04.2022. He contends that the long period of incarceration itself entitles the petitioner to the grant of bail even though the recovery from him is of commercial quantity of contraband.

The Counsel for the State on the other hand has opposed the bail application contending that since commercial quantity of contraband i.e. 1379 grams of Tramadol Hydrochloride was recovered, the petitioner does not deserve the concession of bail. He however, does not dispute the fact that the co-accused of the petitioner has been granted the concession of bail and the petitioner is in custody for more than 03 years and 02 months.

I have heard learned Counsel for both the parties at length.

In the instant case, the charge was framed on 18.12.2019 and despite more than 20 opportunities, the prosecution has not been able to conclude the evidence. Even in the instant case, the petitioner is in custody for a period of 03 years and 02 months and only 02 out of 13 witnesses have been examined so far. Furthermore, the petitioner is not involved in any other case much less under the NDPS Act.

This Court in ***Ghanso @ Kalo Vs. State of Punjab CRM-M-20629-2022*** Decided on ***31.05.2022*** while placing reliance on the judgments of Hon'ble Supreme Court in ***Chitta Bisawa @ Subhas Vs. The State of West Bengal Crl. Appeal No(s) 245/2020 (SLP(Crl.) No.8823/2019*** Decided on ***07.02.2020, Amit Singh Moni Vs. State of***

Himachal Pradesh Crl. Appeal No.668 of 2020 (Arising out of SLP (Criminal) No.3813 of 2020) Decided on 12.10.2020, Vipin Sood Vs. State of Punjab & Anr. CRM-M-20177-2020 (O&M) Decided on 25.02.2021, Kulwant Singh Vs. State of Punjab, Spl. Leave to Appeal (Crl.) No.5187/2021 Decided on 10.11.2021 & Mahmood Kurdeya Vs. Narcotics Control Bureau Crl. Appeal No.1570/2021 @ SLP (Crl.) No.7085/2021) Decided on 07.12.2021 granted bail to the petitioner after she had been in custody for more than 02 years and 08 months. Now in the latest decision of the Hon'ble Supreme Court in ***Md. Raja & Anr. Vs. The State of West Bengal Crl. Appeal No.1293/2022 (Arising out of SLP (Crl.) No.3133/2022 Decided on 22.08.2022 & Mohammad Salman Hanif Shaikh Vs. The State of Gujarat Special Leave to Appeal (Crl.) No.5538-2022 Decided on 22.08.2022*** the accused were granted bail after they had been in custody for about 04 years and none of the prosecution witnesses had been examined.

A perusal of the aforementioned judgments would show that the Hon'ble Supreme Court has also considered and granted the concession of regular bail in cases where the accused had undergone a substantial period of custody despite the rigors of Section 37 of the NDPS Act. Therefore, on account of delay in the conclusion of the trial which would amount to violation of the right to a speedy trial as envisaged under Article 21 of the Constitution, the rigors of Section 37 of the NDPS Act can be relaxed to an extent and the prayer of the accused for grant of bail can be considered despite the fact that he has been found in possession of commercial quantity of contraband.

In view of the above, without commenting on the merits of the

case, the present petition is allowed and the petitioner-**Wazir Singh @ Ziri** son of Sh. Sona Singh is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, concerned.

The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other crime other than the present case.

If the petitioner indulges in similar offence for which he is currently charged, the State would be at liberty to move an application for cancellation of bail.

Petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

August 29, 2022
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>