

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-2723-2021 (O&M)

Date of Decision: 8.2.2023

Kulwinder Singh @ Kindri

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. J.S.Sandhu, Advocate, for the petitioner.

Mr. C.L.Pawar, Addl. AG, Punjab.

KARAMJIT SINGH, J.

CRM-48419-2022

Disposed of as not pressed.

Main case

Prayer in the present petition under Section 439 of Code of Criminal Procedure is for grant of regular bail to the petitioner in case FIR No.53 dated 16.4.2020 registered for the offences punishable under Sections 22 of NDPS Act (Section 27-A of NDPS Act added later on) at Police Station Raman, Bathinda, District Bathinda.

The allegations in nutshell are that 1200 tablets Clovidol100 SR were recovered from the possession of the petitioner by the police on 16.4.2020. As per report of FSL, the said contraband falls under commercial quantity as per provisions of the NDPS Act.

Counsel for the petitioner submits that the petitioner has been falsely implicated in the present case and is in custody for the last about 2 years and 9 months but the trial is not progressing ahead and further submits

that as per custody certificate furnished by the State counsel, the petitioner is shown to be involved in two other cases under NDPS Act; that however, the petitioner is enlarged on bail in both the said two criminal cases as is evident from Annexures P-3 and P-4. He has further submitted that it will take considerable time for the trial to conclude as till date, prosecution is able to examine only 6 witnesses. So, prayer is made that the petitioner be released on regular bail.

The present petition is opposed by the State counsel who submits that commercial quantity of medical intoxicants were recovered from the petitioner on 16.4.2020 and that the trial is going on and out of the total 15 witnesses, 6 witnesses are examined on behalf of the prosecution and that rigors of Section 37 of NDPS Act are applicable in the instant case. However, the State counsel has not disputed the fact that in another two cases, the petitioner is already granted bail vide orders Annexures P-3 and P-4.

I have considered the submissions made by the counsel for the parties.

In the instant case, the petitioner has already faced incarceration for more than 2 years and 8 months. The alleged recovery from the petitioner was 1200 tablets of Clovidol 100 SR which undoubtedly comes within the commercial quantity under NDPS Act. No doubt, the petitioner is involved in two other cases under NDPS Act but he has been enlarged on bail in those two cases and copies of the concerned bail orders are Annexures P-3 and P-4.

Admittedly, the trial is going on but at very slow pace as till date, only 6 prosecution witnesses are examined out of total 15 witnesses

cited by the prosecution. So, it will take considerable time for the trial to conclude.

Division Bench of this Court vide order dated 12.1.2022 passed in CRM-3773-2019 in CRA-D-198-DB-2017 titled **Bhupender Singh v. Narcotic Control Bureau**, had held that in case the accused person is able to make out a case within the parameter of Article 21 of the Constitution in view of the custody period, then he deserves the concession of regular bail, even in the face of rigors of Section 37 of the NDPS Act.

Considering the facts and circumstances of the case, custody of the petitioner and the position of law as discussed above and the fact that the trial is likely to take time, further incarceration of the petitioner would be violative of right of the petitioner enshrined under Article 21 of the Constitution of India.

In view of the above, without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned. The prosecution shall be at liberty to seek cancellation of the bail of the petitioner if in future, he is found indulging in drug trafficking or any other unlawful activity. However, nothing stated hereinabove shall be construed as expression of opinion on the merits of the case. The aforesaid observations are only for the purpose of adjudicating the present bail petition.

(**KARAMJIT SINGH**)
JUDGE

February 8, 2023

Paritosh Kumar

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No