

CRM-M-6098 of 2023

2023:PHHC:089116

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

CRM-M-6098 of 2023

Date of decision: 17.07.2023

Pardeep Kumar @ Deepa

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Ms. Taranjit Kaur Hundal, Advocate,
for the petitioner.

Ms. Anju Sharma Kaushik, DAG, Punjab.

NAMIT KUMAR, J. (ORAL)

1. In compliance of order dated 10.02.2023, status report by way of affidavit of Gagandeep Singh, Assistant Commissioner of Police, West, Jalandhar, has been filed on behalf of the respondent-State, which is taken on record.

2. This petition has been filed by the petitioner under Section 439 read with Section 482 Cr.P.C. seeking regular bail in case FIR No.60 dated 04.04.2020 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Bhargo Camp, Commissionerate of Police, Jalandhar (Punjab).

3. According to the prosecution, on 04.04.2020, recovery of 4410 intoxicant tablets weighing 148 mg each containing Alprazolam salt was effected from the petitioner without any permit or licence, which comes out to be 652.6 grams.

4. Learned counsel for the petitioner submits that the petitioner is

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innocent and has been falsely implicated in the present case as he has not committed any offence. Petitioner is in custody since 04.04.2020. She further submits that the petitioner is Hapatitis 'C' patient. Learned counsel further submits that investigation in the present case is complete; challan has been presented; charges have been framed and out of total 13 prosecution witnesses only 06 witness have been examined as yet. Learned counsel for the petitioner has referred to a judgment of the Hon'ble Supreme Court passed in ***"Satender Kumar Antil Vs. Central Bureau of Investigation and another"***, 2022(10) SCC 51, to contend that the Hon'ble Supreme Court has discussed the serious issue with regard to repeated adjournments and its effect upon the Right to Life under Article 21 of the Constitution of India. She has also referred to a latest judgment of the Hon'ble Supreme Court passed in ***Criminal Appeal No.943 of 2023 titled as "Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)"*** decided on 28.03.2023 to contend that when there is a long delay in the trial and especially when it is not the fault of the accused and in that situation even the effect of Section 37 of the NDPS Act will be diluted in the given facts and circumstances of each and every case. She further submits that petitioner is not involved in any other case under the NDPS Act. Trial may take a considerable time to conclude. Therefore, no fruitful purpose would be served by detaining the petitioner behind bars.

5. *Per contra*, learned State counsel while placing on record the custody certificate, has opposed the prayer for grant of regular bail to the petitioner by submitting that petitioner was found in conscious possession of 4410 intoxicant tablets containing salt Alprazolam, which fall under the category of 'commercial quantity' and in view of bar contained under

Section 37 NDPS, he is not entitled for the relief sought. However, she could not refute that out of total 13 prosecution witnesses only 06 witness have been examined till date; next date before the trial Court is 17.08.2023; petitioner is in custody for the last 03 years 03 months and 12 days and the trial may take a considerable time to conclude.

6. I have heard learned counsel for the parties and perused the record.

7. In view of the custody period undergone by the petitioner, it is apposite to refer to a few judgments of Hon’ble Supreme Court in this regard wherein Hon’ble Supreme Court has granted the concession of bail solely on ground of long custody :-

Case Number	Date of Decision	Title of case	Period which the accused had undergone when granted bail by Hon'ble Supreme Court
Criminal Appeal No.245/2020	07.02.2020	Chitta Biswas @ Subhas Vs. the State of West Bengal	1 year and 7 months
Criminal Appeal No.668/2020	12.10.2020	Amit Singh Moni Vs. State of Himachal Pradesh	2 years and 7 months
Special Leave to Appeal (Crl.) No.5187 of 2021	10.11.2021	Kulwant Singh Vs. The State of Punjab	More than 2 years
Special Leave to Appeal (Crl.) No.5769/2022	01.08.2022	Nitish Adhikary @ Bapan Vs. the State of West Bengal	1 year and 7 months
Special Leave to Appeal (Crl.) No.4173 of 2022	04.08.2022	Shariful Islam @ Sarif Vs. the State of West Bengal	1 year and 6 months

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Criminal Appeal No.1169 of 2022	05.08.2022	Gopal Krishna Patra @ Gopalrusma Vs. Union of India	2 years 1 month and 17 days
Special Leave to Appeal (Crl.) No.5530-2022	22.08.2022	Mohammad Salman Hanif Shaikh Vs. the State of Gurjarat	About 2 years
Special Leave to Appeal (Crl.) No.7840 of 2022	31.10.2022	Shahjad Vs. The State of Uttar Pradesh	About 2 years

8. The Hon'ble Supreme Court in *Special Leave to Appeal (Crl.) No.4169 of 2023 – Rabi Prakash v. The State of Odisha decided on 13.07.2023* has held that in case of prolonged incarceration, conditional liberty will override the statutory embargo under Section 37 of the NDPS Act as the prolonged incarceration is against fundamental right guaranteed under Article 21 of the Constitution of India.

9. Keeping in view the custody of the petitioner, which is 03 years 03 months and 12 days; investigation is complete; challan has been presented; charges have been framed and out of 13 prosecution witnesses, only 06 prosecution witnesses have been examined and trial is likely to take a considerable time, however, without commenting upon the merits of the case, the petitioner is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court. However, in addition to conditions that may be imposed by the trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions: -

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioner shall not absent himself on any date

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before the trial.

- (iv) The petitioner shall not commit any offence similar to the one alleged in the present case.
- (v) The petitioner shall deposit his passport, if any with the trial Court.
- (vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.
- (vii) The petitioner shall not in any manner try to delay the trial.

10. In case of breach of any of the aforesaid conditions and those which may be imposed by the trial Court, the prosecution shall be at liberty to move an application for cancellation of bail of the petitioner.

11. The petition stands disposed of accordingly.

17.07.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No