

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-9669-2022 (O&M)

Reserved on 29.5.2023

Date of Decision: 30.5.2023

Yogender Singh @ Yogesh

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by : Mr. Yashpal Thakur, Advocate
for the petitioner.

Mr. Hakam Singh, AAG, Punjab.

KARAMJIT SINGH, J.

CRM-6420-2023

Allowed as prayed for and documents Annexures P-4 and P-5
are taken on record subject to all just exceptions.

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.150 dated 20.9.2021 registered for the offences punishable under Sections 22, 29 of NDPS Act at Police Station Amloh, District Fatehgarh Sahib.

2. The allegations in nutshell are that the police received secret information against co-accused Ankush on 20.9.2021 and then said Ankush was apprehended by the police along with 55000 tablets of Tramadol and said Ankush made disclosure statement against the petitioner and then the

petitioner was named as accused and the petitioner was arrested by the police from the area of Murthal (Haryana) on 1.10.2021 and 4 boxes each containing 10 strips each having 50 tablets and another 3000 loose tablets were recovered from his possession. The police also named one Arshad as accused but no recovery was effected from said Arshad.

3. Counsel for the petitioner has *inter alia* contended that the petitioner has been falsely implicated in the present case on the basis of the alleged disclosure statement made by co-accused Ankush after about 10 days of his arrest. He has further submitted that veracity and admissibility of the said disclosure statement is subject matter of trial. It has been further contended that the petitioner is in custody for the last more than 1 year and 7 months and is having no criminal history. It has been further submitted that even otherwise, the prosecution story seems to be highly doubtful as the alleged recovery was effected from the area of Murthal in the presence of alleged independent witness belonging to village Takkipur, District Sangrur (Punjab). It has been further contended that as per report of FSL, no contraband was found in tablets which were in the shape of strips. It has been further submitted that as per prosecution, another 3000 loose tablets were also recovered from possession of the petitioner. The colour of the said tablets was not mentioned in the recovery memo (Annexure P-4); that, however, as per report of FSL, the tablets which were analysed by the FSL were having peach colour. It has been further submitted that it is a matter of evidence as to whether the peach colour tablets mentioned in the report of FSL are co-related to 3000 loose tablets as detailed in the recovery memo (Annexure P-4). It is further submitted that the trial is not proceeding ahead

as till date, only one prosecution witness has been examined out of total 29

witnesses. Counsel for the petitioner has further contended that further custody of the petitioner would amount of infringement of the right of the petitioner as provided under Article 21 of the Constitution of India. He has further contended that in **Nitish Adhikary @ Bapan v. State of West Bengal**; SLP (Criminal) No.5769 of 2022 decided on 1.8.2022 and **Shariful Islam @ Sarif v. State of West Bengal**; SLP (Criminal) No.4173 of 2022; decided on 4.8.2022 wherein the accused persons involved in cases relating to recovery of commercial quantity of contraband were ordered to be released on bail by Hon'ble Apex Court on the ground that they had undergone custody for a period of 1 year, 7 months and 1 year, 6 months respectively. So, prayer is made that the petitioner be released on bail.

4. Present petition is resisted by the State counsel who has submitted that the petitioner was named as accused on the basis of the disclosure statement made by co-accused Ankush from whom the police recovered 55000 tablets of Tramadol and the petitioner was arrested on 1.10.2021 and commercial quantity of contraband in the shape of medical intoxicants was recovered from possession of the petitioner. State counsel further submitted that the trial is going on. However, he has not disputed the fact that recovery from the petitioner was effected from the area of Murthal and has also not refuted the fact that the said recovery was effected in the presence of one independent witness namely Gurlal Singh who was resident of District Sangrur (Punjab). State counsel has also not disputed the fact that the petitioner is in custody for the last more than one year and seven months and that the trial is not progressing ahead as till date only one prosecution witness is examined.

parties.

6. It is admitted the case of the prosecution that the petitioner was named as accused on the basis of the disclosure statement made by co-accused Ankush from whom the police recovered commercial quantity of contraband on 20.9.2021. The alleged disclosure statement is stated to have suffered by co-accused Ankush after about 10 days of his arrest. The authenticity and admissibility of the said disclosure statement will be tested during trial. The statement, if any, of the independent witness who belongs to far off place is also subject matter of the trial. The other debatable issues raised by the counsel for the petitioner are also to be considered by the learned trial Court at the relevant stage of trial. Admittedly, the petitioner is having no criminal history and the trial is going at a snail's pace as till date, only one prosecution witness is examined.

7. 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 detention of the petitioner would be violative of right of the petitioner enshrined under Article 21 of the Constitution of India and thus, he deserves the concession of regular bail even in the face of rigors of Section 37 of NDPS Act.

8. 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

May 30, 2023
Paritosh Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No