

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

CRM-M-13483-2022 (O&M)
Date of decision: 26.07.2023

Kapil Dev

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. S. P. S. Khaira, Advocate
for the petitioner.

Mr. Teevar Sharma, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

This is the second petition that has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 216 dated 10.09.2020, registered under Section 21 of the Narcotic Drugs & Psychotropic Substances Act, 1985 at Police Station Moti Nagar, District Ludhiana.

The first petition, bearing CRM-M-9561-2021, was dismissed as withdrawn on 17.09.2021.

Learned counsel for the petitioner submits that the new ground for filing the present petition is that as on today, the petitioner is in judicial custody for the last more than 02 years and 10 months and out of total 12 prosecution witnesses, only 01 witness has been examined so far as the trial is delayed due to heavy pendency of cases. Learned counsel for the petitioner further submits that even this petition is pending for the last more than 01 year.

It is further submitted that as per allegations in the FIR, registered on 10.09.2020, it is stated that SI Surinder Singh, got a secret information that the petitioner is selling intoxicant tablets and if a raid is conducted, he can be apprehended. On the basis of the said information, the FIR was registered and thereafter, the petitioner was apprehended and the recovery of 1400 intoxicant tablets of Clovidol-100 SR having salt of Tramadol Hydrochloride was effected from him.

Learned counsel for the petitioner further submits that a perusal of the FIR would reveal that though the same is registered on the basis of a secret information, however, there is non-compliance of the provisions of Section 42 of the NDPS Act and it will be a matter of trial whether mandatory provisions of the Act were complied with or not. It is also argued that a period of about 01 ½ year has lapsed when the first petition was dismissed as withdrawn and out of total 12 prosecution witnesses, only 01 witness has been examined so far.

Learned State counsel, assisted by ASI Malkeet Singh, has filed the custody certificate, as per which, the petitioner is in judicial custody for the last 02 years, 10 months and 16 days. Though the petitioner is convicted in one other FIR, however, his sentence has been suspended in the said case, as per statement made at bar.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the fact that the petitioner is in judicial custody for the last 02 years, 10 months and 16 days; it will be a matter of trial whether the provisions of Section 42 of the Act were complied with or not; conclusion of trial is likely

to take some time as out of total 12 prosecution witnesses, only 01 witness has been examined so far and also in view of the fact that the delay is not attributable to the petitioner as he is continuing in judicial custody, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaqa Magistrate, concerned.

26.07.2023
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

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