

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

(218)

CRM-M-17749 of 2023
DATE OF DECISION:-20.04.2023

Gurpal Singh @ Happy

...Petitioner

vs.

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. S. S. Maini, Advocate, for the petitioner.

Mr. Amit Shukla, AAG, Punjab.

HARKESH MANUJA, J.

(1) By way of present petition filed under Section 439 of the Code of Criminal Procedure, 1973, petitioner prays for grant of regular bail in case FIR No.33 dated 26.02.2021 under Sections 22(b) of NDPS Act, registered at Police Station Police Station City Kotkapura, District Faridkot.

(2) The allegations levelled in the FIR are of alleged recovery of 1000 tablets of Tramadol Hydrochloride from three persons including petitioner while they were travelling on a motorcycle, petitioner being the pillion rider. The alleged recovery has been shown from a transparent polythene bag.

(3) Learned counsel for the petitioner submits that the investigation in the present case already stands concluded with the filing of *challan* followed by framing of charges and out of the total 17 witnesses as cited by the prosecution, only 3 have been examined so far. Learned counsel further submits that the petitioner is behind the bars for a period of 1 year and 3 months and one of the other co-accused has already been granted bail by this Court vide order dated 27.03.2023 passed in CRM-M-8339-2023.

(4) On the other hand, learned State counsel opposes the prayer made herein while submitting that there is one another case under NDPS Act against the petitioner, though, admittedly the petitioner is on bail in the aforesaid case.

(5) I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the petitioner.

(6) The investigation in the present case already stands concluded with the filing of *challan* followed by framing of charges and the petitioner is behind the bars for a period of 1 year and 3 months now. The conclusion of the trial is likely to take some time specifically under the circumstances that only 3 witnesses have been examined, out of 17 cited by the prosecution. More than that, the other co-accused of the petitioner namely Rampal Singh in the same FIR has already been granted concession of regular bail by this Court vide order dated 27.03.2023 passed in CRM-M-8339-2023. The operative part of the same is read as under:

*“In the present case, the petitioner has been in custody for a period of more than 1 year 2 months and 3 days and is stated to be not involved in any other case and out of 17 witnesses, none have been examined and thus, the trial is likely to take time. Although, the recovery effected in the present case is of commercial quantity, but there are arguable points in favour of the petitioner, inasmuch as, as per the prosecution's case, the petitioner was stated to have been carrying a **"transparent polythene bag"** while riding a motor cycle along with the other co-accused. In the judgments reproduced hereinabove, Co-ordinate Benches of this Court had found the said point to be a debatable issue and observed that it was highly unlikely for a person who intends to commit an offence with respect to some contraband, to carry the same in a transparent polythene bag,*

making it visible to everybody who passes by. The said issue raises arguable points in favour of the petitioner which would be finally determined during the course of trial. Moreover, this Court proposes to impose such conditions that would meet the object of Section 37 of the NDPS Act.”

(7) Without commenting anything on the merits, lest it may prejudice the trial, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the concerned learned trial Court/Duty Magistrate.

(8) However, nothing expressed hereinabove shall be construed as an expression on the merits of the case.

20.04.2023
anil

(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No