

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-20246-2022

Date of Decision: 18.4.2023

Iqbal Singh

....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Ramneet Nijjar, Advocate for
Mr. G.S.Sidhu, Advocate,
for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana.

KARAMJIT SINGH, J.

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.322 dated 23.7.2020 registered for the offences punishable under Sections 22(C) of NDPS Act at Police Station Rania, District Sirsa.

The allegations in nutshell are that on 23.7.2020, the police apprehended petitioner-Iqbal Singh and his co-accused Satbir Jangu while they were coming on a motorcycle and 5000 capsules having medical intoxicants were recovered from their possession.

Counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case and is in custody for the last more than 2 years and 8 months but the trial is not progressing ahead and till date, no prosecution witness has been examined. He further submits that the petitioner is having no criminal history. So, prayer is made that the

petitioner be released on regular bail.

Present petition is opposed by the State counsel who submits that commercial quantity of medical intoxicants were recovered from the petitioner on 23.7.2020 and that the trial is going on. State counsel further submits that rigors of Section 37 of NDPS Act are applicable in the instant case. However, the State counsel has not disputed the fact that the petitioner, who is having no criminal history, is incarcerated for the last more than 2 years and 8 months and that the trial is not progressing ahead.

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

In the instant case, the police is stated to have recovered commercial quantity of contraband from possession of the petitioner and co-accused. The petitioner is in custody for the last more than 2 years and 8 months and is having no criminal antecedents. Admittedly, the trial is going to take time for its termination as till date, no prosecution witness has been examined.

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.

Division Bench of this Court also 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

April 18, 2023
Paritosh Kumar

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