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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.24594 of 2022 (O&M)

Date of decision: 11.04.2023

Bavanish @ Bhavnish

....Petitioner

Versus

Union of India

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Tarun Sharma, Advocate
for the petitioner.

Ms. Sharmila Sharma, Advocate
for the respondent – UOI.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this 2nd petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in case i.e. complaint case bearing NCB Crime No.33/2020 dated 12.06.2020 registered under Sections 8, 22, 29, 60 of the Narcotic Drugs and Psychotropic Substances Act (in short 'the NDPS Act') (Sections 21 and 27-A of the NDPS Act added later) at Police Station Narcotic Bureau Chandigarh.

The earlier petition was dismissed as withdrawn on 01.02.2022.

Counsel for the petitioner has submitted that the new ground for filing this petition is that out of 22 PWs only 01 PW has been examined so far and the petitioner is in custody for the last 02 years and 10 months.

Brief facts of the case are that the NCB received a secret information from the courier service DTDC that one suspected consignment from Panchkula to Ferozepur by M/s. Bridge Greyout Shine Pharma. Upon which, a team was constituted and recovery of 57000 tablets of TRAMADOL was effected, when the petitioner had gone to receive the parcel.

Counsel for the petitioner has submitted that, in fact, the petitioner is an employee of one Mohit Gupta. It is also submitted that in Paragraphs 24 and 25 of the complaint filed by the NCB, it is stated that the petitioner after his arrest has suffered a statement that he was working in Amrit Enterprises for the last 05 years. One Mohit Gupta was his childhood friend, who was residing in Ferozepur Cantt. and was also running a medicine trading company. Bavanish and Mohit Gupta met one Samir Gupta, who told them that they can earn huge amount in the business of TRAMADOL. Thereafter, out of greed of money, they agreed to work as per his desire. It is further stated that the petitioner and Mohit Gupta, remain in touch with each other on WhatsApp regarding the consignment of TRAMADOL tablets and some amount was transferred in the account of Mohit and Rakesh Kumar Singla. It is also stated that both the petitioner Bavanish @ Bhavnish and Mohit had gone to DTDC office and the petitioner, while receiving the courier, was apprehended by the NCB team and on checking the same, 57000 tablets of TRAMADOL were recovered.

Counsel for the petitioner has further argued that the charges were framed much earlier, however till date, out of 22 PWs, only 01 PW has been examined. It is also submitted that the petitioner

is not involved in any such or similar case and he is in custody since 12.06.2020.

Counsel for the petitioner has relied upon the judgment **“Mohd Muslim @ Hussain vs State (NCT of Delhi)”**, passed in SLP (Crl.) No.915 of 2023, decided on 28.03.2023, wherein the Hon’ble Supreme Court considering the long custody of the accused facing trial under the NDPS Act, has granted bail, holding that if the trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Further, Paragraph 19 of the said judgment, reads as under:-

“19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.”

Counsel appearing for the respondent/NCB, on instructions from Intelligence Officer Amar Shahkar, could not dispute the fact that only 01 PW has been examined out of 22 PWs but opposed the prayer for bail.

Without commenting anything on merits of the case, considering the fact that in the initial secret information, the petitioner was not named and it is only at the subsequent stage, he was apprehended while receiving the courier and in view of the fact that it

will be a matter of trial whether a proper procedure has been followed under Section 50 of the NDPS Act and also the fact that the petitioner is in custody for the last 02 years and 10 months; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

11.04.2023
yakub

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