

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

(209)

CRM-M-24065-2023

Date of decision: - 24.05.2023

Suman Singh @ Suman Kumar**....Petitioner****Versus****State of Punjab****.....Respondent****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. Raman Mohinder Sharma, Advocate
for the petitioner.

Mr. Ferry Sofat, Additional Advocate General, Punjab.

VIKAS BAHL, J. (ORAL)

1. This is the third petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.95 dated 25.10.2021, registered under Sections 22 & 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 and Sections 61 & 85 of NDPS Act, added later on, at Police Station Sadar Abohar, Tehsil Abohar, District Fazilka.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody since 25.10.2021 and out of total 13 prosecution witnesses, only two have been examined and thus, the trial is likely to take long time. It is further submitted that the petitioner is not involved in any other case and the previous bail application of the petitioner was withdrawn at that stage on 08.12.2022 and even subsequent to the same, sufficient time has elapsed, but the trial has not made much progress,

thus, entitling the petitioner to file the present third regular bail application. It is submitted that co-accused of the petitioner, namely, Jaswant Singh, who is similarly placed as the present petitioner, has been granted the concession of regular bail by the Co-ordinate Bench of this Court, vide order dated 24.04.2023 passed in CRM-M-9499-2022. It is stated that as per the prosecution case, the said Jaswant Singh was alleged to have been driving a motorcycle, whereas, the present petitioner was stated to be the pillion rider and the recovery is alleged to have been made jointly from the present petitioner and said Jaswant Singh. It is also stated that the custody of the present petition is one month more than the said Jaswant Singh.

3. Learned counsel for the petitioner has relied upon a judgment of Coordinate Bench of this Court passed in “**Mehtab Singh @ Mehtaba Vs. State of Punjab**”, ***reported as 2000(2) RCR (Criminal) 228*** to contend that that on the ground of parity, the petitioner deserves to be granted the concession of regular bail.

4. Learned State counsel, on the other hand, has opposed the present petition for grant of regular bail and has submitted that recovery of commercial quantity has been effected in the present case from co-accused Jaswant Singh and the present petitioner, inasmuch as, 780 tablets of Tramadol which have been recovered weighing 263 grams and the commercial quantity starts from 250 grams and thus, the bar under Section 37 of the NDPS Act would apply. The other facts, however, have not been disputed by learned State counsel.

5. This Court has heard learned counsel for the parties and has

perused the paper book.

6. The petitioner is in custody since 25.10.2021 and out of total 13 prosecution witnesses, only two have been examined and thus, the trial is likely to take long time. The petitioner is stated to be not involved in any other case and co-accused of the petitioner, who is similarly placed as the present petitioner, has been granted the concession of regular bail by the Co-ordinate Bench of this Court, vide order dated 24.04.2023 passed in CRM-M-9499-2022. The relevant portion of the said order is reproduced herein below: -

“In view of the afore-referred judgments, facts and circumstances of the case, in particular that the petitioner is in custody for the last 1 year 5 months and 26 days; he is not involved in any case; charges have been framed on 01.08.2022, however, only 2 out of 13 prosecution witnesses have yet been examined, the trial is likely to take a considerable time, further incarceration of the petitioner would be violative of his right enshrined under Article 21 of the Constitution of India and the rigors of Section 37 of the NDPS Act can be diluted bearing in mind the right to a speedy trial, thus the present petition for grant of regular bail deserves to be allowed.

As a result, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate concerned and subject to him not being required in any other case. The petitioner shall abide by the following conditions:-

- 1. The petitioner will not tamper with the evidence during the trial.*
- 2. The petitioner will not pressurize/ intimidate the prosecution witnesses.*
- 3. The petitioner will appear before the trial Court on each and every date fixed, unless is exempted by a specific order of Court.*
- 4. The petitioner shall not commit an offence similar to the offence of which, he is an accused, or for commission of which he is suspected of.*

5. *The petitioner shall not directly or indirectly coerce, induce, threaten or promise to any person acquainted with the facts of the case so as to dissuade him/ her from disclosing such facts to the Court or to any police officer or tamper with the evidence in any manner.*

6. *The petitioner shall not in any manner misuse his liberty.*

7. *The petitioner shall furnish his address and mobile number to the Trial Court forthwith and shall not change the same till the conclusion of the trial and in case for any reason, the petitioner seeks to change any of the aforesaid, the same shall be done only with prior intimation to the learned Trial Court, stating the reason for the same.*

8. *The petitioner shall deposit his passport, if any, with the Trial Court forthwith and in case, he does not have the passport, he shall furnish a specific affidavit in this regard.*

It is made abundantly clear that in case there is any breach of the aforesaid conditions, the State shall be at liberty to seek cancellation of bail as granted to the petitioner by this order.

In view of the above, this Court makes it clarified that the observations made herein above are limited for the purpose of present proceedings and would not be construed as any opinion on the merits of the case and the trial would proceed independently of the aforesaid observations.

(AMAN CHAUDHARY)
JUDGE

April 24, 2023”

8. It is not in dispute that the case of the present petitioner is on parity with the said co-accused Jaswant Singh and that the custody of the present petitioner is one month more than that of said Jaswant Singh.

9. Coordinate Bench of this Court in **Mehtab Singh @ Mehtaba's case (supra)** has held as under:-

*“But the learned counsel for the petitioner, on the other hand, contends that the co-accused Amrik Singh who is similarly placed, has been granted bail by this Court by order dated 3.5.1999 and, therefore, the same concession can be extended to the petitioner also. In this connection, the learned counsel for the petitioner relied upon a decision of the Madhya Pradesh High Court in **Vishnu Ram Chandra***

Maheshwari v. State of M.P., 1999(3) All India Criminal Law Reporter 645 wherein it was held that generally rule of consistency requires that if a co-accused has been granted bail by the Court and the case against the applicant before the Court is similar and identical, he should be granted bail. That was also a case where the accused whose application for bail was earlier dismissed, but was subsequently granted bail on the ground of parity in view of the fact that the co-accused whose case is also similar and identical, had been granted bail. That decision squarely applies to the facts of the case in hand.”

10. Keeping in view the above said facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him not being required in any other case. The petitioner shall also abide by the following conditions:-

- i). The petitioner will not tamper with the evidence during the trial.
- ii). The petitioner will not pressurize/intimidate the prosecution witness(s).
- iii). The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
- iv). The petitioner shall not commit an offence similar to the offence of which he is accused, or for commission of which he is suspected.
- v). The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer or tamper with the evidence.

11. However, it is made clear that in case, any act is done by the

petitioner to threaten the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

12. Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

May 24, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes