

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-29733-2023
DECIDED ON: 21.07.2023

HARDEEP SINGH @ DEEP

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. J.S. Dhaliwal, Advocate
for the petitioner.

Mr. Karan Puggal, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. The present second petition has been filed under Section 439 of the Code of Criminal Procedure, for the grant of regular bail in FIR bearing No.0165 dated 16.09.2021, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as ‘the NDPS Act’) at Police Station City-II Mansa, District Mansa.
2. As per the allegations mentioned in the FIR, on 16.09.2021 the petitioner was found in possession of 15 vials of WINCIREX Cough Syrup each weighing 100 ml. Upon examination of the contents of the above said seized contraband, it was found to contain “Codeine Phosphate” which is mentioned at Sr. No.28 in the schedule attached to the NDPS Act. The total weight of the “Codeine Phosphate” came to 2000 ml. which is a commercial quantity.
3. Learned counsel for the petitioner vehemently argues that the recovery in question is shrouded with suspicious circumstances and he makes a reference to the recovery documents as well as the Search Memo to contend that FIR Number

has been mentioned on the top of the said document whereas no FIR had been registered till that point of time. A further argument is raised that there is no conversion formula to ascertain the weight of the seized contraband and 2000 ml. cannot be treated equivalent to 01 kg. in the absence of any standardized formula of conversion.

4. Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. According to the custody certificate, petitioner is behind the bars for the last 1 year 5 months and 18 days, who is involved in two other cases.

5. Learned State counsel contends that the petitioner was found in possession of contraband and accordingly was arrested as per the provisions contained under the NDPS Act. No satisfactory explanation has been furnished by the petitioner for being in possession of the above said quantity. He, however, does not dispute the fact that only 04 witnesses have been examined out of total 16 witnesses cited by the prosecution and that the petitioner has already undergone actual custody of 17 months.

6. I have heard the learned counsel appearing on behalf of the respective parties and have gone through the case file with their able assistance. Taking into consideration the circumstances noticed above; the period of actual custody of 17 months undergone by the petitioner; and also the stage of the trial that out of 16 witness cited by the prosecution only 04 witnesses have been examined, I deem it fit to allow the instant application.

7. As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as **“Baljinder Singh alias Rock vs. State of Punjab”** decided on 02.03.2023, wherein, while referring Article 21 of the

the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would lend the petitioner in a situation of denial the concession of bail.

8. In light of the above, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

9. The present petition is, hereby, allowed.

10. However, it is made clear that any observation made hereinabove, shall not be construed as an expression of opinion on the merits of the case.

21.07.2023

Meenu

(SANDEEP MOUDGIL)
JUDGE

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