

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

CRM-M-28083-2023

Date of Decision: 06.11.2023

GURWINDER SINGH

... PETITIONER

V/S

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. G.S.Sandhu, Advocate for the petitioner.

Mr. Sandeep Kumar, DAG Punjab.

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VIVEK PURI, J. (ORAL)

1. Petitioner is seeking regular bail in case bearing FIR No. 154 dated 03.09.2021 under Section 22(C) of the NDPS Act, registered at Police Station Special Task Force, Mohali, District STF Wing Mohali.

2. Learned counsel for the petitioner contends that the petitioner along with two co-accused were travelling in a car and allegedly a bag containing 11200 intoxicating tablets of Tramadole have been recovered. The petitioner is neither the owner nor the driver of the vehicle from which the contraband has been recovered. The petitioner is in custody for a period of 2 years and 2 months and not involved in any other case. Furthermore, it will be a debatable and moot point as to whether the petitioner was in joint conscious possession of the contraband or not.

3. Learned counsel for the petitioner has relied upon the decisions of Hon'ble the Supreme Court of India rendered in ***Criminal Appeal No. 668 of 2020*** titled as ***Amit Singh Moni Vs. State of Himachal Pradesh***, wherein

bail has been granted to the accused in a case pertaining to the recovery of commercial quantity, after he had completed more than 02 years and 07 months of actual custody. Furthermore, it has been argued that in **SLP (Crl.) No. 5769 of 2022** titled as **Nitish Adhikary @ Bapan vs. The State of West Bengal**; decided on 01.08.2022 by the Hon'ble Supreme Court of India, the accused was granted bail in a case pertaining to the recovery of commercial quantity after he had undergone custody for a period of 1 year and 7 months and trial was at a preliminary stage, as only 1 witness had been examined as the accused was not having criminal antecedents. Besides, in a decision rendered in **SLP (Crl.) No. 4173 of 2022**, decided on 04.08.2022 titled as **Shariful Islam Vs. Sarif Vs. The State of West Bengal**, the accused was granted bail after he had suffered incarceration for over 1 year and 6 months and there being no likelihood of completion of trial in near future.

4. Learned State counsel has opposed the bail application on the score that the total weight of the contraband is to the extent of 3496 gms which falls in the category of commercial quantity. It has also been submitted that out of 23, 3 witnesses have been examined.

5. It is no doubt true that the quantity of contraband in the instant case falls in the category of commercial quantity, but the custody certificate indicates that the petitioner is in custody for a period of 2 years and 2 months and not involved in any other case. So far only 3, out of 23 witnesses have been examined. Furthermore, the petitioner is neither the owner nor the driver of the vehicle from which the recovery has been effected. The petitioner cannot be kept in incarceration for a long period of time during the course of trial, particularly, when the trial is progressing at a slow pace.

The speedy trial is a constitutional right provided to an accused under article 21 of the Constitution of India.

6. As such, sufficient mitigating circumstances are made out to extend the concession of bail to the petitioner. Therefore, without making any expression of opinion on the merits of the case, it is ordered that the petitioner be released on regular bail subject to his furnishing fresh bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

7. The petition is allowed.

06.11.2023

Janki

**(VIVEK PURI)
JUDGE**

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