

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

CRM-M-32906-2023 (O&M)

Date of decision: 18.07.2023

Raj Kumar @ Khuda

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Lokesh Vohra, Advocate
for the petitioner.

Mr. Teevar Sharma, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

This is the second petition that has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 203 dated 13.10.2018, registered under Section 22 of the Narcotic Drugs & Psychotropic Substances Act, 1985 at Police Station City Phagwara, District Kapurthala.

The first petition, bearing CRM-M-42665-2019, was dismissed as withdrawn on 07.01.2020.

Learned counsel for the petitioner submits that the new ground for filing the present petition is that as on today, the petitioner is in judicial custody for the last 04 years, 09 months and 06 days and the case is still at the stage of recording the statement of prosecution witnesses.

Learned counsel for the petitioner further submits that as per allegations in the FIR, registered on 13.10.2018, the police party noticed a person standing on the road side holding a black bag on his right shoulder.

When the said person noticed the police party, he threw the said bag into the bushes and ran away, however, he was apprehended by the police party, headed by ASI Sukhwinder Kumar. Later on, the said bag was searched and 30 injections of Buprenorphine Hydrochloride and 7260 intoxicant capsules of Tramadol Hydrochloride were recovered.

Learned counsel for the petitioner further submits that the petitioner is in long judicial custody and out of total 08 prosecution witnesses, 02 witnesses are still to be examined.

Learned counsel for the petitioner has relied upon the judgment rendered in ***Rabi Prakash vs. State of Odisha***, SLP (Crl.) No. 4169 of 2023, decided on 13.07.2023 to submit that it is held by Hon'ble Supreme Court that where the custody of the petitioner is long, the twin conditions of Section 37 of the NDPS Act can be dispensed with.

Learned State counsel has filed the custody certificate, which is taken on record. Learned State counsel, on instructions from the Investigating Officer, submits that one prosecution witness, namely SI Harjit Singh, who has partly conducted the investigation, is himself on run in some other criminal case, therefore, the trial is delayed as despite issuance of non-bailable warrants, his presence could not be procured.

As per custody certificate, the petitioner is in long judicial custody of 04 years, 09 months and 06 days.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the peculiar facts and circumstances of the case and also in view of the fact

that one of the star prosecution witnesses himself is not appearing before the trial Court as he is wanted in some criminal case and also in view of the ratio of law laid down by Hon'ble Supreme Court in *Rabi Prakash's* case (supra), no useful purpose would be served by keeping the petitioner in further custody as he is already in judicial custody for the last more than 04 years and 09 months.

Accordingly, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaq Magistrate, concerned.

18.07.2023

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No