

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34952-2023

Reserved on: 02.11.2023

Pronounced on: 06.11.2023

SAGAR

. . . . Petitioner

Vs.

State of Haryana

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Siddarth and Ms. Poonam Rani, Advocate,
for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

DEEPAK GUPTA, J.

By way of this petition filed under Section 439 CrPC, petitioner prays for grant of regular bail in case FIR No.286 dated 01.07.2021 registered at Police Station Dabua, Faridabad under Sections 22 (c) (Act N: 61 of 1985) of the Narcotics Drugs and Psychotropic Substances Act, 1985 [for short 'the NDPS Act'] and Sections 18A and 18(c) of the Drugs and Cosmetics Act, 1940 [for short 'the Drugs Act'].

2. This is stated to be fifth regular bail. The earlier petitions bearing CRM-M-46554-2021, CRM-M-268-2022, CRM-M-19038-2022 and CRM-M-19454-2023 were dismissed as withdrawn.

3. As per the allegations, secret information was received against the petitioner on 01.07.2021 to the effect that he was involved in selling of narcotics injections. Compliance of Section 42 of the NDPS Act was made. Naka was laid. Petitioner was apprehended. After making compliance of Section 50 of the NDPS Act, search was conducted in the

presence of Gazetted officer, which resulted into recovery of 112 injections of Buprenorphine Leegesic of 2 ml. each (total 224 ml.) and 361 injections of Avil. The same were taken into possession after completing necessary formalities. FIR was registered under Section 22(c) of the NDPS Act and Sections 18A and 18(c) of the Drugs.

4. It is contended by ld. counsel that petitioner has been falsely implicated, having no concern with the alleged recovery; that he is in custody for the last more than 2 years and 4 months; that trial may take time to conclude; that witnesses cited by the prosecution are official and so, there is no possibility of tampering with the evidence and so, in all the circumstances, petitioner be allowed regular bail.

5. Ld. State counsel opposed the bail petition by pointing out towards the commercial category of the contraband as recovered from the petitioner. Ld. State counsel further submits that out of 14 witnesses cited by the prosecution, 6 have already been examined and that case is now fixed for 23.01.2024 for examining the remaining witnesses. However, by placing on record the custody certificate, it is not disputed by ld. State counsel that petitioner is in custody for the last more than 2 years and 4 months. Prayer is made for rejecting the bail petition.

6. I have considered submissions of both the sides and have appraised the record.

7. No doubt that alleged recovery of contraband from the petitioner is of commercial category, but at the same time, Court cannot ignore the custody period of the petitioner, which is more than 2 years and 4 months. The custody certificate further reveals that petitioner is not involved in any other case pertaining to the NDPS Act.

8. In a decision rendered by Hon'ble Supreme Court in ***Mohammad Salman Hanif Shaikh Vs. The State of Gujarat, Special Leave to Appeal (Crl.) No.5530 of 2022***, decided on 22.08.2022, appellant had spent about 2 years in custody and trial was likely to take time. The case of the prosecution was that recovery of commercial quantity of contraband was effected from the appellant. However, considering the custody period, Hon'ble Supreme Court was pleased to grant regular bail.

In ***Chitta Biswas @ Subhas Vs. The State of West Bengal, Criminal Appeal No.245/2020***, decided on 07.02.2020, Hon'ble Supreme Court was pleased to grant concession of bail to the appellant in a case where the custody period was 1 year and 7 months approximately despite the fact that recovery was of commercial quantity.

In yet another case titled ***Gopal Krishna Patra @ Gopalrusma Vs. Union of India, Criminal Appeal No.1169 of 2022***, decided on 05.08.2022, the custody period of the appellant therein was approximately 2 years and 1 month. Considering the length of custody, concession of bail was granted.

In ***Nitish Adhikary @ Bapan Vs. The State of West Bengal, Special Leave to Appeal (Crl.) No.5649/2022***, decided on 01.08.2022, the appellant therein was in custody for the last 1 year and 7 months in a case involving recovery of commercial category of contraband. The bail was granted by Hon'ble Supreme Court. In that case, Hon'ble Supreme Court also made reference of Section 37 of the NDPS Act, but the bail was granted after considering the custody period.

9. In the present case also, as noticed earlier, custody period of the petitioner is more than 2 years and 4 months. He has no criminal antecedents regarding any NDPS matter. Trial may take time to conclude. In these facts and circumstances and by considering the views taken by the Hon'ble Supreme Court in various authorities referred above, this Court is of the view that rigour of Section 37 of the NDPS Act is required to be balanced with the right of speedy trial being a facet of fundamental right of life and liberty under Article 21 of the Constitution of India, available to the petitioner.

10. Having regard to all the above facts and circumstances, but without commenting anything further on merits of the case, petition is allowed. Petitioner is admitted to regular bail on his furnishing requisite bail bonds and surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

Allowed.

06.11.2023

Vivek

(DEEPAK GUPTA)
JUDGE

1. Whether speaking/reasoned?
2. Whether reportable?

Yes
No