

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

312

**CRM-M-37914-2022 (O&M).****Date of Decision: 12.07.2023.****Dinesh Kumar @ Dinu****...Petitioner****Versus****State of Punjab****...Respondent****CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ**

\*\*\*\*\*

Present: Ms. Neesh Garg, Advocate, for  
Ms. Kannupriya, Advocate, for the petitioner.

Ms. Lavanya Paul, DAG, Punjab,  
assisted by SI Gurtej Singh, Police Station City 2, Mansa.

\*\*\*\*\*

**VINOD S. BHARDWAJ. J (ORAL)**

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 2 Mansa, District Mansa.

As per the allegations mentioned in the FIR, on 16.09.2021 the petitioner was found in possession of 20 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.

Learned counsel for the petitioner vehemently argues that the recovery in question is shrouded with suspicious circumstances and she 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. She further argued that the petitioner has been in actual custody for nearly 22 months and that the trial is not proceeding any further and only 04 witnesses out of total 16 witnesses cited by the prosecution have been examined. She further contends that the petitioner does not have any criminal antecedents and is not involved in any other case pertaining to the NDPS Act.

On the other hand, 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. She, 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 22 months. Further, she does not dispute the fact that

the petitioner is not involved in any other case registered under the NDPS Act.

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 22 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.

Accordingly, the instant petition is allowed and the petitioner is ordered to be admitted to regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witness in any manner directly or indirectly.

The observation made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall decide the case on the basis of available material.

July 12, 2023  
*raj arora*

(VINOD S. BHARDWAJ)  
JUDGE

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