

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

268

**CRM-M-36655-2022
Date of decision: 28.02.2023**

GURMEJ SINGH

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Jashandeep Singh Sandhu, Advocate
for the petitioner.

Ms. Niharika Sharma, AAG, Punjab.

VINOD S. BHARDWAJ. J. (ORAL)

This is a second petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No. 116 dated 08.09.2020 registered under Sections 22, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Sadar Moga, District Moga.

2. Briefly summarized the allegations levelled in the present petition are that the Investigating agency had received a secret information that the petitioner & co-accused are involved in drug trade and are carrying, a Cache whereupon one vehicle bearing registration DL-1CL-2960 was stopped. Two persons namely Rajwinder Kaur @ Raj wife of Davinder Singh resident of Data Road, Kot Ise Khan and the petitioner-Gurmej Singh were travelling in the said vehicle at the said time. The secret informant had conveyed that the petitioner & co-

accused were involved in the trade of selling intoxicant tablets and that the same is being transported by them via village Kot Ise Khan-Saleena Atari Link road to Moga City in the above vehicle. The ruka was sent to the Police Station for registration of the case under Section 22 & 25 of the NDPS Act. The vehicle in question was intercepted and the petitioner as well as Rajwinder Kaur @ Raj were arrested at the spot. 15,000 tablets of Clovidol-100 SR, in thirty boxes, containing the salt of Tramadol Hydrochloride were recovered from the back seat of the aforesaid vehicle.

3. Counsel for the petitioner contends that the investigation in the case is complete and the final report had been filed. He submits that even though the petitioner has already undergone an actual custody of more than 02 years and 07 months, however, only 01 witness out of 22 witnesses has been examined so far. It is also pointed out that there is 01 more case under the NDPS Act against the petitioner wherein a small quantity i.e. 04 kg of poppy husk had been recovered and that the petitioner is already on bail in the said case. It is further argued that the prosecution witnesses are not coming forth to depose before the Court and that even bailable warrants have been issued for securing presence of the prosecution witnesses. The delay in culmination of the trial is not attributable to the petitioner. He further contends that no independent witness or Gazetted Officer was joined during investigation by the police. Mandatory provision of search & seizure were not complied with despite secret information. He submits that the recovery is suspect & that he had requested for preservation of call data to prove his point. He further submits that the petitioner has been in custody since

08.09.2020 and despite the case having been adjourned on six occasions to enable prosecution to lead its evidence, trial has made little progress.

4. Counsel for the respondent does not dispute the aforesaid factual aspect and has failed to assign any satisfactory reason for the failure of respondents to conclude their evidence.

5. I have heard learned counsel appearing on behalf of the respective parties and have gone through the record with their assistance.

6. Taking into consideration the circumstances noticed above and the fact that the petitioner has already undergone an actual custody of more than 02 years and 07 months and that only 01 prosecution witness out of 22 witnesses have been examined so far. Besides, the case was adjourned for nearly 06 times after taking up on actual basis and twice by order, the State was examined only one prosecution witness. The provisions of Article 21 of the Constitution of India require expeditious trial. The petitioner cannot be kept confined in custody for an indefinite period when the prosecution miserably fails to conclude its evidence in a time bound manner. Even though Article 21 may not always create a right in favour of an accused to claim default bail, however, the circumstances shows that trial is not likely to conclude expeditiously given the pace at which witnesses are being examined. This Court is usually suspending sentences where a person is sentenced to 10 years in a case of recovery of commercial quantity on undergoing 04 years total sentence & at least 2 years after conviction.

Taking the totality of circumstances with consideration, I deem it

appropriate to enlarge the petitioner on bail upon furnishing bail bonds/surety bonds to the satisfaction of the Trial Court.

7. The instant petition is allowed and the petitioner is ordered to be released on bail on his furnishing the requisite bail bond/surety to the satisfaction of the Trial Court/Duty Magistrate concerned.

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

9. The observations 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 the material available.

The petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

FEBRUARY 28, 2023

Vishal sharma

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>