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

CRM-M-41880-2021

Date of decision : 21.08.2023

Harjinder Singh**..... Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Armaan Gagneja, Advocate
for the petitioner.

Mr. Amit Shukla, AAG, Punjab.

PANKAJ JAIN, J. (Oral)

Prayer is for grant of regular bail in FIR No.200 dated 22.07.2021, registered for offences under Section 22(c) of NDPS Act, registered at Police Station City, Muktsar, District Sri Muktsar Sahib.

2. As per the case of the prosecution, the petitioner was found to be in illegal possession of 300 tablets of clevedol-SR-100 and 50 tablets of Etizolam 0.5.

3. Counsel for the petitioner does not dispute that so far as the quantity of Etizolam is concerned, same would fall within the commercial and thus rigors of Section 37 of NDPS Act would be inevitable. However, submits that the petitioner is in custody for more than 02 years and 25 days. The trial is proceeding at snail's pace as only 05, out of 17 witnesses have been examined so far. Further relies upon Division Bench of **Bhupender Singh vs. Narcotic Control Bureau, (2022) 2 RCR (Criminal) 706** to submit that wherever long

incarceration of more than 02 year is involved, petitioner is entitled to

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seek bail dehors the rigors of Section 37 of the Act. He further relies upon order passed by Supreme Court in the case of ***Indrajit Mondal & Anr. vs. The State of West Bengal***, dated 03.05.2023, wherein the Apex Court admitted accused to bail dehors commercial quantity recovered from him observing as under:-

- “1. The petitioners seek their enlargement on bail in First Information Report No.740/2020 dated 21-1-2020 registered at Police Station Islampur, District Murshidabad, West Bengal under Sections 21(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.
2. The allegations are that the petitioners were illegally carrying 440 plastic bottles of Phensedyl Chlorpheniramine Maleate and Codeine Phosphate Cough Linctus each bottle containing 100 ml and having 10 ml of Codeine Phosphate, collected from coaccused.
3. The petitioners were arrested on 27-11-2020.
4. We are informed by learned counsel for the State of West Bengal that out of 17 witnesses, 8 witnesses have been examined so far. The conclusion of trial will thus take some time. There are no criminal antecedents against the petitioners.
5. Taking into consideration the period already suffered by the petitioners in custody, coupled with the fact that they do not have any criminal antecedents, in our considered view, there is substantial compliance of rigours of Section 37 of the Act.
6. Consequently, but without expressing any views on the merits of the case, we are inclined to enlarge the petitioners on bail.
7. The petitioners are, therefore, ordered to be released

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on bail, subject to their furnishing bail bonds to the satisfaction of the trial court.

8. The petitioners shall appear before the Special Judge regularly and in the event of their being absent, it shall be taken as a misuse of the concession of bail.
9. The Special Leave Petition is disposed of in the above-terms.
10. Pending application also stands disposed of.”

4. Division Bench of this Court in **Bhupender Singh’s case (supra)**, after considering issue with respect to achieving balance between right to speedy trial guaranteed under Article 21 of the Constitution of India and the rigors enumerated under Section 37 of the Act held that convict/accused is not precluded from claiming bail invoking parameters of Article 21 of the Constitution of India dehors the stringent provisions of Section 37 of the Act.

5. Right to speedy trial is one of the objectives of NDPS Act and is rather one of the checks and balances provided under the Act. Section 36 of the NDPS Act recognizes the need for speedy trial. The constitution of Special Courts is means to achieve the said objective of speedy trial. It is only with an objective to synthesize the right to speedy trial and rigors of Section 37 that the Supreme Court in the afore-referred cases granted concession of regular bail to the under-trials merely on the basis of long incarceration that they have suffered owing to delay in trial.

6. Keeping in view the aforesaid facts and circumstances of the present case, the instant petition deserves to be allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety

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bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence similar to the one alleged in the present case.
- (v) The petitioner shall deposit his passport, if any with the trial Court.
- (vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.
- (vii) The petitioner shall not in any manner try to delay the trial.

7. In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.

8. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

21.08.2023
Dinesh

Whether speaking/reasoned : Yes
Whether Reportable : No