

2023:PHHC:115938  
IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-39273-2023  
DECIDED ON: 04.09.2023

TARSEM LAL  
.....PETITIONER

VERSUS

STATE OF PUNJAB  
.....RESPONDENT

**CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

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

Mr. Rajiv Verma, DAG Punjab.

**SANDEEP MOUDGIL, J (ORAL)**

1. The jurisdiction of this Court has been invoked under Section 439 Cr.P.C., seeking regular bail to the petitioner in FIR No.166, dated 29.11.2021, under Sections 22 (c) and 29 of NDPS Act, 1985, registered at Police Station Khuiansarwar District Fazilka, Punjab.
2. Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case. He further submitted that the petitioner is in custody from 05.12.2021, which is almost 1 year 9 months and 3 days as of now and charges in the present case were framed on 01.06.2022 and almost more than a year has elapsed since then not even a single prosecution witness has been examined till date. It is asserted on behalf of learned counsel for the petitioner that the alleged recovery i.e. 31600 intoxicating tablets has been shown to be effected from the trala bearing registration No. PB-05T-9327, which was being driven by the co-accused of the petitioner namely Rimpa and the petitioner was sitting on the conductor seat of the said trala. He further submitted that even as per the

prosecution story and the FIR itself, there was no recovery effected from the conscious possession of the petitioner and as per the FIR, the petitioner was sitting on the conductor seat of the trala. He further submitted that mandatory provisions of the NDPS Act as provided under Section 42, 50 and 52 have not been complied with by the prosecution. He further submitted that it was a pre-planned effort on the part of the police because of political rivalry and the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner particularly in view of the fact that the alleged recovery was not effected from the conscious possession of the petitioner.

3. On the other hand, Mr. Rajiv Verma, DAG, Punjab has submitted that it is correct that the petitioner is in custody for about 1 year 9 months and 3 days and after the framing of charges on 01.06.2022, no prosecution witness has been examined till date. He has however opposed the grant of regular bail to the petitioner on the ground that since the recovery from the petitioner and other co-accused was 31600 intoxicating tablets, which falls in the category of commercial quantity, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act. He further submitted that even if the tablets were recovered from the trala, still it cannot be said that there was no recovery effected from the petitioner. He does not dispute the fact that there is no other case of any nature is pending against the petitioner.

4. Considering the custody period undergone by the petitioner i.e., 1 year 9 months and 3 days as of now added with the facts that charges have been framed on 01.06.2022; no prosecution witness has been examined till date, which suffice to the mind of this Court that trial is likely to take long time, which would violate the principle of right to speedy trial and expeditious disposal under Article 21 of Constitution of India, as has been time and again discussed by this Court, while

*Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131*, this Court is of the view that no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period.

5. In light of the above discussions made hereinabove as well as judgment of Apex Court rendered in *Dheeraj Kumar Shukla vs. State of Uttar Pradesh, SLP(Crl) No.6690 of 2022*, wherein it has been held that though the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last 1 year, 9 months and 3, we are satisfied that the conditions of Section 37 of the Act can be dispensed with. In the case in hand, the petitioner is not involved in any other case of any nature meaning thereby he is having clean antecedents.

6. In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

7. The present petition is, hereby, allowed.

8. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

(SANDEEP MOUDGIL)  
JUDGE

04.09.2023

Meenu

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|----------------------------------|---------------|
| <i>Whether speaking/reasoned</i> | <i>Yes/No</i> |
| <i>Whether reportable</i>        | <i>Yes/No</i> |