

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

220

CRM-M-49668-2022 (O&M)
Date of decision: 12.07.2023

Jagsir @ Jagga

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Varun Sharma, Advocate for
Mr. Tarun Sharma, Advocate for the petitioner.

Mr. Gurdarshan Singh Sidhu, AAG Punjab.

HARNARESH SINGH GILL, J. (ORAL)

Through this petition, the petitioner seeks regular bail in case bearing FIR No.94 dated 23.06.2021, registered under Section 22 of the NDPS Act, at Police Station City Moga, District Moga.

The status report filed along with the FSL report by the respondent-State is already on record.

Learned counsel for the petitioner submits that the FIR was registered on a secret information and the petitioner has falsely been indicted in the present case; that the alleged recovery of 700 Etizolam Mouth Dissolving Tablets ETM-0.5 and 500 Etizolam Mouth Dissolving Tablets ETM-0.5, was effected from co-accused Ravi and the petitioner, respectively; that the story of the prosecution is concocted as the police has picked up the petitioner from his house at Ferozepur on 21.06.2021 at about 4.45 am along

with his Swift as well as one Innova cars; that Police of Police Station City Moga has no jurisdiction to conduct raid at Ferozepur; that the Investigating Officer and the complainant, is the same person; that Section 42 of the NDPS Act has not been complied with in the present case; that out of 13 prosecution witnesses only 01 has been examined so far and that the petitioner has been in custody since 21.06.2021

Per contra, while opposing the prayer for grant of regular bail to the petitioner, learned State counsel does not dispute the custody period of the petitioner. He, however, submits that the recovery effected from the petitioner falls under the commercial quantity and that Section 37 of the NDPS Act bars the grant of bail to the accused in case of commercial quantity. The petitioner is a habitual offender and is involved in some other cases also. Some material witnesses are yet to be examined.

I have heard the learned counsel for the parties.

As per the case of the prosecution, recovery of 500 Etizolam Mouth Dissolving Tablets ETM-0.5, was effected from the petitioner. Indisputably, the extent of intoxicant tablets, allegedly recovered from the petitioner, falls under the category of 'commercial quantity'. Section 37 of the NDPS Act bars the grant of bail to the accused in the case of 'commercial quantity'. The liberal approach in granting bail in cases under the NDPS Act, is uncalled for.

The Hon'ble Supreme Court, in Criminal Appeal No.1001- 1002 of 2022, titled as 'Narcotics Control Bureau Vs. Mohit Aggarwal', decided on 19.07.2022, has held that length of the period of custody of the accused or the

fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the accused under Section 37 NDPS Act.

Moreover, the petitioner is also involved in other cases though not of similar nature yet the fact remains that he is a habitual offender. It is not denied for a moment that the period of custody is a relevant factor, but simultaneously the totality of the circumstances and the criminal antecedents are also to be weighed. Keeping in view the criminal antecedents of the petitioner, the period of custody of more than 01 year and 11 months as per the custody certificate, in my considered opinion, melts into insignificance.

Considering the same, at this stage, no justifiable ground is made out to extend the concession of regular bail to the petitioner.

Consequently, the present petition stands dismissed.

12.07.2023
Mangal Singh

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No