

215 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-48441-2023
Date of Decision: 29.09.2023

SANDEEP GUPTAPETITIONER
VERSUS

STATE OF HARYANA RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sandeep Singh, Advocate
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present is the fourth petition filed under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case FIR No.211 dated 15.09.2020 under Sections 21/22/29 and 61 of the NDPS Act, registered at Police Station Chhappar, District Yamuna Nagar. The last bail petition was declined by this Court by passing an order dated 19.04.2023 and at that point of time only 4 witnesses out of 17 were examined. But as of now, as per learned State counsel, 6 witnesses have been examined.

Apart from the above, there is no other change of circumstance.

The allegation against the petitioner was that he was owner of the car which he himself was driving in which there was one more co-accused, namely, Akshay Kumar. The police party had a secret information on the basis of which both of them were apprehended and there was an alleged recovery of 1000 injections of *Tramadol HCL* consisting 2 ml. each and 1975 injections of *Buprenorphine* consisting of 0.3 mg.

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2. Learned counsel for the petitioner submitted that now the custody of the petitioner is about 2 years and 1 month and therefore, the petitioner may be considered for concession of regular bail in the present case, specially when the trial of the case is not going at a fast pace. He also submitted that there are material discrepancies in the memo of notice issued under Section 50 of NDPS Act because the FIR number and the Sections were also mentioned in the memo of notice.

3. On the other hand, the learned State Counsel, has submitted that it is correct that the petitioner is in custody for about 2 years and 1 month. She has submitted that after the dismissal of the earlier bail petition on 19.04.2023, there is no change of circumstance and therefore, the present petitioner is not entitled for the grant of regular bail. It is submitted that at the time when the earlier bail petition was dismissed, 4 witnesses were examined and now 6 witnesses have been examined out of the cited 17 and therefore, the trial of the case is going at a fast pace and cannot be said that the trial of the case is not going on properly. It has been submitted that the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act as the recovery from the petitioner is huge and falls in the category of commercial quantity and learned counsel for the petitioner has not been able to make out any ground for making a departure from the above said bar. Therefore, the present petition may be dismissed.

4. I have heard learned counsel for both the parties.

5. The alleged recovery from the petitioner was 1000 injections of *Tramadol HCL* consisting 2 ml. each and 1975 injections of *Buprenorphine*

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consisting of 0.3 mg. which falls in the category of commercial quantity. Although, the custody of the petitioner is 2 years and 1 month but as per learned counsel for the parties 06 out of 17 witnesses have already been examined. Therefore, it cannot be said that the trial of the case is not going on properly.

6. This Court is of the view that no ground is made out by the learned counsel for the petitioner for making a departure from the bar contained under Section 37 of the NDPS Act in the present case. The discrepancy so pointed out by the learned counsel for the petitioner in the memo of notice under Section 50 of the NDPS Act cannot be said to be fatal to the prosecution, at least at this stage for the purpose of forming a prime facie view that the petitioner is not guilty of offence as so required under Section 37 of the NDPS Act.

7. In view of the aforesaid facts and circumstances of the case, this Court does not find any merit in the present petition and the same is hereby dismissed.

8. However, anything observed herein above shall not be treated as an expression of opinion on merits of the case & is only meant for the purpose of decision of present petition.

29.09.2023
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(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |