

CRM-M-49586-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-49586-2023
Reserved on: 20.11.2023
Pronounced on: 24.11.2023

Karnail Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Akashdeep S. Sidhu, Advocate for the petitioner.
Mr. Shiva Khurmi, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
14	16.03.2021	Singh Bhagwantpur, District Hoshiarpur	22, 61 & 85 of NDPS Act

1. The petitioner, incarcerated for around 02 years & 07 days in the FIR captioned above for possessing commercial quantity of manufactured drugs punishable under Section 22 of NDPS Act, has come up before this Court under Section 439 CrPC seeking bail.
2. Facts of the case are being taken from para 2 of the reply dated 06.11.2023. As per which, on 16.03.2021 the police party was checking the suspects and at that time at around 7 PM, ASI Balvir Singh received a secret information that Karnail Singh (present petitioner) was dealing in selling intoxicant injections and on that day also he would be carrying such contraband. Based on such information, the concerned investigator complied with the requirements of Section 42 of NDPS Act and erected the check post. He also called for another investigating officer at the spot. After some time, police party nabbed the petitioner who was carrying a polythene bag in his right hand and on his search 190 ampoules labelled as LEEGESIC (Buprenorphine Injection I.P.), was recovered. Each injection was containing 2 ML liquid substance, which is commercial quantity.
3. Petitioner’s counsel seeks bail on the ground that Section 50 of NDPS Act was not complied with. This argument is misleading because search was not from the hand but

CRM-M-49586-2023

from the bag he was carrying, as such Section 50 of NDPS Act, would not apply. Petitioner's next contention is that the complainant conducted the investigation, as such the petitioner has been seriously biased. This argument is contradictory to the record. It is explicitly mentioned that on receiving secret information, the complainant had called another investigator at the spot who had conducted the search and seizures. The petitioner's next argument is that it is highly improbable that a person would carry such a massive quantity in his hand and in fact if he would be carrying such quantity he would prefer to go in a vehicle. This argument is based on surmises and assumptions and it is for the petitioner to raise this point in the trial Court after cross-examining the witnesses in this regard. It is not a ground for bail. The petitioner's next ground is that he is a poor person. The quantity involved in the present case is many times more than the commercial quantity and poverty cannot be a ground to overwrite strict conditions of Section 37 of NDPS Act, as such the petitioner is not entitled to bail on the ground of poverty. Petitioner's next contention is that at the time of search no photograph was taken from the spot. There are no specific rules or directions in which it has been made mandatory to photograph the search and seizures. Petitioner's further argument is his custody i.e. 02 years & 07 days and he submits that he is entitled to bail based on ***Dheeraj Kumar Shukla v. The State of Uttar Pradesh [SLP (Crl) 6690-2022], decided on 25 Jan 2023.*** In Dheeraj Kumar Shukla (supra), Supreme Court had granted bail to the accused as he was a first offender and custody was more than 02 years & 06 months. In the present case, petitioner has not completed 02 years & 06 months, as such he is not entitled to bail on the ground of pre-trial custody.

4. Needless to say that it is need of hour that police must photograph the search and seizures but in the absence of binding rules it would only a question of prejudice which the petitioner has to establish at the time which can be seen only by appreciating the trial while arriving at the finding of guilt or innocence. As such this point can be considered in other type of bail.

5. State's counsel has argued that the trial is at the very fag end and out of 13 witnesses, 08 have already been examined and for remaining 05 witnesses, State counsel undertakes not to delay the trial any further.

The petition is dismissed. All pending applications, if any, stand closed. However, considering the petitioner's right to speedy trial coupled with the pre-trial incarceration, this court requests the concerned trial court to make all endeavours to conclude the trial within six months, of which the prosecution evidence be completed preferably within five months and the remaining time to provide an opportunity to the accused to lead

CRM-M-49586-2023

defence evidence, if so desired, and to conclude its hearing. To meet the deadline, an endeavourbe made to speed up the process for service and to pass the necessary directions in this regard. It is clarified that if expediting this trial disturbs the docket of the concerned court, then a balance be struck, and if, on this account, any delay happens, then an extension can be sought by mentioning such reasons. It is clarified that this order speeding up the trial is subject to the condition that neither the petitioner shall seek any adjournment nor try to use any tactics to delay the trial. If they do so, this order of expediting the trial shall stand automatically recalled by resorting to Section 362, read with Section 482 Code of Criminal Procedure, 1973, without any further reference to this court. If any of the accused is on bail and fails to attend the trial without any sufficient cause, then they be dealt with strictly but in accordance with the law. It is clarified that if the trial is not concluded by the date mentioned above, and if the delay is not attributable to the petitioner, then the petitioner may file an application for bail before the trial court, which shall decide it expeditiously and consider the bail on the grounds of pre-trial custody, and all the previous orders of dismissal passed by the trial court or High Court shall not come in the way.

(ANOOP CHITKARA)
JUDGE

24.11.2023
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Whether speaking/reasoned: Yes
Whether reportable: No.