

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

Neutral Citation No. 2023:PHHC:154249
CRM-M-52884-2023
Reserved on: November 30, 2023
Date of Decision: December 04, 2023

Lovepreet Singh @ Lovely @ Labhpreet Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Karandeep Singh Sidhu, Advocate for the petitioner.

Mr. M.S. Nagra, AAG, Punjab.

DEEPAK GUPTA, J.

By way of this petition filed under Section 439 Cr.P.C., petitioner prays for his release by granting regular bail in case FIR No.0264 dated 17.09.2021, registered under Sections 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as ‘the NDPS Act’), at Police Station Lambi, District Sri Muktsar Sahib.

2. As per prosecution allegations, 6000 tablets of Tramwel-SR 100 (Tramadol Prolonged release tablets IP), were recovered on 17.09.2021 from the possession of the petitioner and co-accused Sandeep Singh, when they were riding on a motorcycle.

3. It is contended by learned counsel that petitioner has been falsely implicated; that recovery was not effected from the conscious possession of the petitioner; that petitioner is not involved in any other case; that petitioner is in custody for the last more than 02 years and that

in various latest authorities, Hon'ble Supreme Court of India has allowed

bail in cases of long incarceration, by observing that rigor of Section 37 of the NDPS Act was required to be balanced with Article 21 of the Constitution of India.

4. Learned State counsel has opposed the petition by pointing out the fact that the recovered quantity falls in the category of commercial quantity, inasmuch as the weight of the recovered contraband was 2280 grams, which is much more than the commercial category, which starts from 250 grams.

5. Heard. It is conceded by learned State counsel on the basis of custody certificate placed on record that the petitioner is in custody for the last 02 years, 02 months and 10 days in this case and he has no other criminal case pending against him. It is also disclosed in the status report that after framing of the charges on 08.08.2022, the prosecution has examined only 03 witnesses so far out of the 18 witnesses cited by it.

6. No doubt that alleged recovery of contraband from the petitioner is of commercial category, but at the same time, Court cannot ignore the custody period of the petitioner, which is more than 2 years and 2 months. The custody certificate further reveals that petitioner is not involved in any other case pertaining to the NDPS Act.

7. In “*Union of India v. K.A. Najeed*”, (2021) 3 SCC 713, it has been observed by Hon’ble Supreme Court that it has been clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial.

8. Besides, in a decision rendered by Hon'ble Supreme Court in *Mohammad Salman Hanif Shaikh Vs. The State of Gujarat, Special Leave to Appeal (Crl.) No.5530 of 2022*, decided on 22.08.2022, appellant had spent about 2 years in custody and trial was likely to take time. The case of the prosecution was that recovery of commercial quantity of contraband was effected from the appellant. However, considering the custody period, Hon'ble Supreme Court was pleased to grant regular bail.

In *Chitta Biswas @ Subhas Vs. The State of West Bengal, Criminal Appeal No.245/2020*, decided on 07.02.2020, Hon'ble Supreme Court was pleased to grant concession of bail to the appellant in a case where the custody period was 1 year and 7 months approximately despite the fact that recovery was of commercial quantity.

In yet another case titled *Gopal Krishna Patra @ Gopalrusma Vs. Union of India, Criminal Appeal No.1169 of 2022*, decided on 05.08.2022, the custody period of the appellant therein was approximately 2 years and 1 month. Considering the length of custody, concession of bail was granted.

In *Nitish Adhikary @ Bapan Vs. The State of West Bengal, Special Leave to Appeal (Crl.) No.5649/2022*, decided on 01.08.2022, the appellant therein was in custody for the last 1 year and 7 months in a case involving recovery of commercial category of contraband. The bail was granted by Hon'ble Supreme Court. In that case, Hon'ble Supreme Court

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also made reference of Section 37 of the NDPS Act, but the bail was granted after considering the custody period.

9. In the present case also, as noticed earlier, custody period of the petitioner is more than 2 years and 2 months. He has no criminal antecedents. Trial may take time to conclude. In these facts and circumstances and by considering the views taken by the Hon'ble Supreme Court in various authorities referred above, this Court is of the view that rigor of Section 37 of the NDPS Act is required to be balanced with the right of speedy trial being a facet of fundamental right to life and liberty as enshrined in Article 21 of the Constitution of India.

10. Having regard to all the above facts and circumstances, but without commenting anything further on merits of the case, petition is allowed. Petitioner is admitted to regular bail on his furnishing requisite bail bonds and surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

Allowed.

December 04, 2023

sarita

(DEEPAK GUPTA)
JUDGE

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