

[206] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-55313-2023

Date of Decision :09.11.2023

Om Parkash @ Toofani

...Petitioner

versus

State of Punjab

....Respondent

Coram : **HON'BLE MR. JUSTICESANDEEP MOUDGIL**

Present : Mr.Vikas Malik, Advocate for
Mr. N.S. Dandiwal, Advocate
forthe 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.079 dated 27.06.2022, under Sections 22 and 29of Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity 'the Act') registered at Police Station Badhni Kalan, District Moga.

2. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case and recovery of 126 loose tablets of Etizolam were planted upon the petitioner. He further submits that the alleged recovery is effected from the transparent polythene bag which was allegedly thrown by the petitioner thus no recovery has been effected from the conscious possession of the petitioner. There is non-compliance of Sections 40 and 50 of the NDPS Act and the petitioner is in custody since 27.06.2022 and after framing of charges on 12.12.2022, out of total 14

3. Learned State Counsel has filed the Custody Certificate of the petitioner, which is taken on record, which reflects that the petitioner has suffered incarceration of 01 year, 04 months and 11 days as on today. He prays for dismissal of the instant petition stating that the recovery effected from the petitioner is of commercial in nature and he is not having clean antecedents as he is involved in another case bearing FIR No.19 dated 25.02.2020 under Sections 61/1/14 of the Excise Act, Police Station BadhniKalan.

4. However, looking into the totality of the facts as well as version narrated in the FIR, which is evident that the alleged recovery of contraband is not from the physical possession of the petitioner but the same was recovered from a transparent polythene bag lying on the earth.

5. Considering the aforesaid facts and circumstances and custody period already undergone by the petitioner i.e. 01 year 04 months and 11 days, added with the facts that out of total 14 prosecution witnesses, none has been examined so far, after framing of charges on 12.12.2022, meaning thereby, the trial is moving at a snail's pace, this Court is of the opinion that no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period, wherein 'Bail is a Rule and Jail is an Exception' and it would also 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 relying the judgment of the Apex Court passed in '**Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131.**'

6. In view of the discussions made hereinabove, the petitioner is ordered 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

09.11.2023
'Rajneesh'

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