

Neutral Citation No.2024:PHHC:056704
S. No.214 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Shatrughan Kumar	CRM-M-6685 of 2024
Vs.	Date of Decision:25.04.2024
State of Punjab	Petitioner
	Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Sukhcharan Singh Gill, Advocate
for the petitioner.
Mr. Sahil R. Bakshi, AAG, Punjab.

DEEPAK GUPTA, J.

By way of this petition filed under Section 439 Cr.P.C., petitioner prays for grant of regular bail in case FIR No.28 dated 02.05.2022 registered under Section 22 (Act No.61 of 1985) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') at Police Station GRP Patiala, District Patiala.

This is his second petition before this Court for this purpose. Earlier petition bearing CRM-M-56765 of 2022 filed by the petitioner was dismissed on merits by co-ordinate Bench of this Court vide order dated 28.08.2023, copy of which is Annexure P.4.

As per prosecution allegations, 40 vials of Cocrex of 100 ml each; 60 vials of Onerex of 100 ml each; and 300 intoxicating tablets of Alprasafe 0.5 containing salt of Alprazolam were recovered from the possession of the petitioner on 02.05.2022. These were taken into possession and after making necessary statutory compliance, the samples were got analysed from the FSL. The samples of parcels No.1 and 2 qua Cocrex and Onerex revealed the salt to be that of Codeine Phosphate; whereas the third parcel consisting of tablets of Alprasafe was found to be that of Alprazolam. The recovered quantity falls in the commercial category.

Learned counsel contends that the petitioner has been falsely implicated; that he is in custody for the last approximately two years; that he is the first offender being not involved in any other case; that trial may take time to conclude and so, he be allowed bail.

Learned counsel has specifically pointed out that at the time of dismissal of the earlier petition on 28.08.2023, two witnesses out of 11 cited by the prosecution, had been examined and it was observed by this Court that remaining witnesses shall be examined with due promptitude so as to complete the trial but still no other witness has been examined further.

Learned State Counsel has opposed the bail petition by pointing out that recovered quantity falls in the commercial category and so, Section 37 of the NDPS Act bars grant of bail in such like cases. Learned State Counsel further submits that the earlier bail petition was rejected by this Court after noticing that huge quantity of different materials, all commercial individually, was recovered from the petitioner. Prayer is made for rejecting the bail petition. However, it is conceded by learned State Counsel that out of 11 witnesses cited by the prosecution, only two have been examined till date, which was the position at the time of dismissal of the earlier bail petition on 28.08.2023.

Heard.

The custody certificate as placed on record by the State Counsel would reveal that the petitioner is in custody for the last 01 year 11 months and 27 days, i.e. almost two years. Custody certificate further reveals that the petitioner is not involved in any other case. No doubt, that petitioner has been found to be in possession of contraband of the commercial category and so rigors of Section 37 of the NDPS Act are required to be complied with but at the same time, the Court

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cannot overlook the custody period of the petitioner which is now almost two years and the fact that trial is not proceeding further as only two witnesses have been examined till date out of 11 cited by the prosecution which was the position even at the time of dismissal of the earlier bail petition by this Court on 28.08.2023 vide Annexure P.4. A co-ordinate Bench of this Court in **CRM-M-2394 of 2023 titled “Mohd. Haleem Vs. State of Punjab”**, vide its order dated 20.12.2023 has referred to the few judgments of Hon'ble Supreme Court wherein concession of bail has been granted solely on the basis of long custody, by drawing a table. The said table reads as under:-

Case Number	Date of Decision	Title of case	Period which the accused had undergone when granted bail by Hon'ble Supreme Court
Criminal Appeal No.245/2020	07.02.2020	Chitta Biswas @ Subhas Vs. The State of West Bengal	1 year and 7 months
Criminal Appeal No.668/2020	12.10.2020	Amit Singh Moni Vs. State of Himachal Pradesh	2 years and 7 months
Special Leave to Appeal (Crl.) No.5187 of 2021	10.11.2021	Kulwant Singh Vs. The State of Punjab	More than 2 years
Special Leave to Appeal (Crl.) No.5769 of 2022	01.08.2022	Nitish Adhikary @ Bapan Vs. The State of West Bengal	1 year and 7 months
Special Leave to Appeal (Crl.) No.4173 of 2022	04.08.2022	Shariful Islam @ Sarif Vs. The State of West Bengal	1 year and 6 months
Criminal Appeal No.1169 of 2022	05.08.2022	Gopal Krishna Patra @ Gopalrusma Vs. Union of India	2 years 1 month and 17 days
Special Leave to Appeal (Crl.) No.5530 of 2022	22.08.2022	Mohammad Salman Hanif Shaikh Vs. The State of Gujarat	About 2 years
Special Leave to Appeal (Crl.) No.7840 of 2022	31.10.2022	Shahjad Vs. The State of Uttar Pradesh	About 2 years

Apart from above, it has been held by Hon'ble Supreme Court in **Rabi Prakash Vs. The State of Odisha**, Special Leave to Appeal (Crl.) No.4169 of 2023 decided on 13.07.2023 that in case of prolonged incarceration, the conditional liberty will override the statutory embargo under Section 37 of the NDPS Act as the prolonged incarceration is against fundamental right guaranteed under Article 21 of the Constitution of India.

Having regard to the afore-said facts and circumstances, but without commenting anything further on the merits of the case, present petition is allowed. Petitioner is admitted to bail on his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court/ Duty Magistrate concerned, on usual terms and conditions.

April 25, 2024
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No