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

CRM-M- 8674-2024
Date of Decision: 03.07.2024

Labh Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Peeush Gagneja, Advocate
for the petitioner.

Mr. Nirmaljeet Singh Diwana, Senior DAG, Punjab.

HARSH BUNGER J. (ORAL)

1. This is third petition filed under Section 439 of the Code of Criminal Procedure on behalf of petitioner (Labh Singh) for grant of regular bail in case bearing FIR No.103 dated 10.07.2022, under Section 22(c) and 22(a) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the N.D.P.S. Act'), (Challan presented under Sections 22A/22C/29 of the N.D.P.S. Act), registered at Police Station Gidderbaha, District Sri Muktsar Sahib.

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as withdrawn vide order dated 16.01.2023 and second petition (CRM-M-8155-2023) was dismissed by this Court vide order dated 07.08.2023 (Annexure P-9).

3. In pursuance of advance notice served upon the State of Punjab, status report by way of affidavit dated 29.04.2024 of Mr. Jasbir Singh, P.P.S., Deputy Superintendent of Police, Sub Division Gidderbaha, District Sri Muktsar Sahib has been filed on behalf of State of Punjab, which is already on record.

4. Custody certificate dated 01.07.2024 of the petitioner is filed by learned State counsel in Court today, which is taken on record, subject to all just exceptions.

5. Briefly, the aforesaid case FIR was registered on the basis of *ruqa* sent by Sub Inspector Gurlal Singh, Police Station Gidderbaha, wherein, it is stated that on 10.07.2022, he, along with other fellow employees, was present in the police station when one written information was received from Assistant Sub Inspector Raghbir Singh, who had stated that while he (Assistant Sub Inspector Raghbir Singh), along with fellow employees, was present near the park of Village Gidderbaha, in a private vehicle for patrolling and checking of suspects, then on account of the street being congested, they parked the car near the park and were going on foot in the street; and from the opposite side, one man and a woman, who were holding one polythene bag each in their hands, upon seeing the police party, threw the said polythene bags held in their hands and turned back, however, they were apprehended by the police party on the basis of suspicion. Upon

enquiring about their particulars, the man is stated to have told his name as



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Labh Singh (petitioner) and the woman told her name as Parwinder Kaur @ Beant Kaur wife of Labh Singh. Both of them were stated to be husband and wife. It is stated in the *ruqa* that when Assistant Sub Inspector Raghbir Singh went near the transparent polythene bags thrown by the aforesaid apprehended persons then from both the bags, strips of medicines were clearly visible. After following the due process, the search was conducted. From the transparent polythene bag thrown by Parwinder Kaur, three strips (each containing 15 tablets) and one trimmed strip, containing 5 tablets, thus total 50 tablets; mark *Etizolam Tablets IP Etizola 0.5*, whose batch number is B.No.KEC 2202 A, MFG 03/2022, Exp. 02/2025, were recovered. Similarly from the transparent polythene bag thrown by Labh Singh (petitioner), six strips (*in each strip 10/10 tablets*), total 60 tablets; mark *ALPRASAFE 0.5 Alprazolem* tablets IP 0.5 mg, whose batch number is PCCAA 691, MFG DATE 07/2020, EXPIRY DATE 06/2023, were recovered. The personal search of Parwinder Kaur was conducted through lady Constable Lovepreet Kaur; however, no other intoxicating substance or objectionable articles were found, apart from six notes of Rs.100/- (total Rs.600/-). From the personal search of Labh Singh (petitioner), no other intoxicating substance or objectionable article was found, except one note of Rs.100/-. Accordingly, the petitioner, along with co-accused, was arrested.

6. As per status report, the samples of the recovered contraband were sent to the Forensic Science Laboratory, Bathinda, for analysis; whereupon, the report dated 16.08.2022 (Annexure R-1) was received. The relevant extract thereof would read as under:-



the laboratory. Parcel 1 was alleged to be seized from S/v Parwinder Kaur and parcel 2 was alleged to be seized from S/v Labh Singh. Each parcel was sealed with one seal of AK and alleged to contain intoxicating tablets.

Seal on the parcel was found intact and tallied with the specimen seal impression.

On opening the parcels 1 and 2 were found to contain the following:

Parcel 1 : Fifteen (15) white coloured tablets in a strip labelled as Etizola 0.5 Etizolam tablets IP bearing Batch No.KE2202A, Mfg. 03/2022, Exp. 02/2025.

Avg. weight : 56.97 mg./tablet

Parcel 2 : Twenty (20) peach coloured tablets in two strips, each strip labelled as Alprasafe 0.5, Alprazolam tablets IP 0.5 mg. bearing Batch No.PCCAA691 Mfg. 07/2020, Exp. 06/2023

Avg. 124.63 tablet

7. *Purpose of reference : Analysis and report*

8. *Identification & Tests :*

<i>Ingredient present</i>	<i>Average quantity of ingredient present in parcels</i>	
	<i>Parcel 1</i>	<i>Parcel 2</i>
<i>Etizolam</i>	<i>0.49 mg./tablet</i>	
<i>Alprazolam</i>		<i>0.48 mg./tablet</i>

REPORT

The tablets contained in the parcels 1 and 2 under reference have been analysed separately by the chemical, TLC and instrumental analysis. On the basis of analysis, the ingredients alongwith their quantities found present in parcels 1 and 2 have been given at Sr.No.8 (identification and tests) of this report. ”

7. Learned counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated in the present case. Learned counsel *inter alia* submits that the petitioner and his wife (co-accused) are

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having three children (two sons and one daughter), out of which, the elder son is a drug addict and other two children are minors; and with the arrest of the petitioner as well as his wife, there is no one to look after the minor children.

7.1. Learned counsel for the petitioner further submits that the provisions of the N.D.P.S. Act have not been complied with and a joint Recovery Memo has wrongly been prepared in this case. It is submitted that in case the recovery allegedly effected from the petitioner alone is seen then the same falls in the category of “Intermediate Quantity”.

7.2. Learned counsel for the petitioner submits that the petitioner was arrested in the instant case on 10.07.2022; and apart from this case, he is not involved in any other case under the N.D.P.S. Act. It is stated that the petitioner has already undergone actual custody in this case for a period of one year, eleven months and eighteen days (as on 01.07.2024); investigation in the case is complete, challan stands presented on 16.11.2022, charges have also been framed on 09.01.2023 and out of total thirteen prosecution witnesses, only one prosecution witness has been examined by now; thus, the trial is likely to take some time to conclude and no useful purpose would be served by keeping the petitioner behind the bars for indefinite period. It is further contended that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court. Learned counsel submits that the petitioner is also ready to furnish security in the form of Fixed Deposit Receipt (F.D.R.) of Rs.50,000/- before the concerned Court, so as to ensure his presence before the Court on each and every date of hearing.

7.3. With the aforesaid submissions, learned counsel for the

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petitioner has prayed for grant of regular bail to the petitioner.

8. Per contra, learned State counsel opposes the prayer of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence. It is submitted that the recovered contraband in the instant case falls under the category of 'commercial quantity' and thus, rigors of Section 37 of the N.D.P.S. Act are attracted in this case. Learned State counsel further states that there is an apprehension that in the event of grant of bail, the petitioner may abscond to delay the trial. Accordingly, prayer has been made for dismissal of the present petition.

8.1 However while referring to the custody certificate, it is conceded by learned State counsel that petitioner has undergone actual custody in the instant case for a period of one year, eleven months and eighteen days (as on 01.07.2024) and he is not involved in any other case. Learned State counsel further concedes that investigation in the case is complete, challan stands presented and charges have also been framed; and out of total thirteen prosecution witnesses, only one prosecution witness has been examined by now.

9. I have heard learned counsel for the parties and perused the paper book as well as the status report and custody certificate of the petitioner.

10. In the instant case, the petitioner has undergone actual custody for a period of one year, eleven months and eighteen days (as on 01.07.2024). Investigation in the case is complete, challan stands presented on 16.11.2022 and charges have been framed on 09.01.2023. The

second petition filed by petitioner seeking regular bail was dismissed by this



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Court on 07.08.2023, i.e. almost one year ago, and out of total thirteen prosecution witnesses, only one prosecution witness has been examined by now; therefore, this Court has reason to believe that the trial in this case is likely to take some time to conclude.

11. In a recent decision, while considering the bail under the N.D.P.S. Act, the Hon'ble Supreme Court in "**Mohd. Muslim @ Hussain V. State (NCT of Delhi)**", 2023 AIR (Supreme Court) 1648 held as under:

"19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v.



Rattan Malik (2009) 2 SCC 624). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.”

12. Hon'ble Apex Court in case titled **“Umarmia Alias Mamumia v. State of Gujarat”, (2017) 2 SCC 731**, has held delay in criminal trial to be in violation of right guaranteed to an accused under Article 21 of the Constitution of India.

13. In **“Manoranjana Sinh alias Gupta v. CBI”, (2017) 5 SCC 218**, Hon'ble Apex Court has held that the object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial.

Pertinently, appropriate directions can be issued for securing the attendance of the petitioner during the trial.

14. As regards the apprehension expressed by learned State counsel that the petitioner may abscond during trial or indulge in similar illegal activities, the State/Prosecuting Agency/State police shall be at liberty to observe the behaviour of the petitioner during the bail period, and in case it feels that the petitioner is causing interference with the progress of trial or indulging in similar illegal activities, it shall be open for the State/Prosecuting Agency/State police to move to the trial Court for cancellation of the bail, which shall be decided by the trial Court on its own

merits.

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15. Keeping in view the aforementioned facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate concerned. However, the concerned Station House Officer shall be informed about the release of petitioner and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of case/trial and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer. He would also furnish his undertaking to the effect that he will not indulge in any illegal activity. The petitioner shall also mark his presence before the concerned Police Station/Station House Officer on first Monday of every month till the conclusion of trial and in case the Station House Officer refuses to mark his presence, he is permitted to make an application before the Illaqa Magistrate, concerned.

16. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs.50,000/- and submit the same with the trial Court. The same would be liable to be forfeited as per law, in case the petitioner remains absent from trial without any sufficient cause.

17. Nothing expressed hereinabove shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.



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18. The petition is accordingly disposed of.
19. All pending application(s), if any, shall also stand closed.

03.07.2024

Apurva

**(HARSH BUNGER)
JUDGE**

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