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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND  
HARYANA AT CHANDIGARH

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CRM-M-8696-2024 (O&M)  
Date of decision: 09.09.2024

Mohd Arif @ Nikka ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Abdul Aziz, Advocate  
for the petitioner.

Mr. A. S. Samra, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. This petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No. 181 dated 18.12.2021, registered under Section 22 of the NDPS Act, 1985 at Police Station City-I, Malerkotla, District Malerkotla.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that on 18.12.2021, a police party headed by SI Baljit Singh was on patrolling duty. They noticed that two persons were coming on white colour scooty from opposite side and on seeing the police party, they tried to turn back and the pillion rider threw down one transparent envelope, due to which, strips of intoxicant tablets scattered out of that envelope and some strips remained lying in that envelope. The said persons were apprehended by the police party. On inquiry, the driver of that scooty disclosed his name as 'Mohammad Anwar @ Ambu', whereas the pillion rider disclosed his name as 'Mohammad Aarif @ Nikka; i.e. the present petitioner. Thereafter,

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recovery of 7000 intoxicant tablets make Celcidal-100SR and 2000 intoxicant tablets make Alprasafe-0.5 was effected from them. They were formally arrested at the spot. After completion of necessary investigation and usual formalities, *challan* under Section 173 of Cr.P.C. was presented in the Court and presently, the petitioner is facing trial for commission of aforesaid mentioned offences. He had moved an application before the trial Court for grant of regular bail but the same had been dismissed, vide order dated 13.02.2024.

3. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. The alleged recovery of the intoxicant tablets was in fact planted upon him. Learned counsel for the petitioner has further argued that three parcels were sent to FSL, Mohali for chemical examination and vide FSL report dated 15.02.2022, it was reported that parcel A-1, which was containing 20 tablets of Celcidal-100 SR, did not contain intoxicant substance. Hence, the aforesaid recovery of 7000 tablets does not fall within the ambit of the NDPS Act. Even the mandatory provisions of Section 50 of the NDPS Act were not complied with. Learned counsel has further argued that similarly situated co-accused, who was allegedly riding the aforesaid scooty, has been granted the concession of interim bail by this Court, vide order dated 01.12.2023 passed in **CRM-M-40356-2022** and the said petition is now pending for 23.10.2024. The petitioner is in custody since 18.12.2021. He is not involved in any other case. Though *challan* has been presented on 16.06.2022, however, the trial is not going on snail's pace as till date, only two prosecution witnesses have been examined so far. Hence, the

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conclusion of the same is likely to take long time. No useful purpose would be served by keeping him in custody anymore. It is, therefore, urged that the petition deserves to be allowed.

4. Status report has been filed by the respondent-State, as per which, the petitioner and co-accused were apprehended by the police party and recovery of total 9000 intoxicant tablets was effected from them. While arguing that a commercial quantity of the contraband was recovered from the petitioner and co-accused, it is argued that rigors of Section 37 of the NDPS Act would be attracted in this case. Hence, it is urged that the petition is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable length and have also gone through the record carefully.

6. As per the allegations, the petitioner and co-accused Mohammad Anwar @ Ambu were apprehended by the police party and recovery of total 9000 intoxicant tablets was effected from them. Three parcels containing samples of the recovered intoxicant tablets were sent to FSL, Mohali for chemical examination of the same. The FSL report has been received, as per which, in the sample of parcel A-1, which was containing sample of Celcidal-100SR tablets, no intoxicant substance was found. Learned counsel for the petitioner has placed on record copies of some zimni orders, a perusal of which, reveals that only 02 prosecution witnesses have been examined so far, though the *challan* was presented on 16.06.2022, which means that the trial is substantially delayed. The petitioner is in custody since 18.12.2021. As mentioned above, co-accused Anwar @ Ambu has been granted concession of

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interim bail by this Court. Hon'ble Supreme Court in ***Rabi Prakash vs. State of Odisha : 2023 Live Law (SC) 533*** has held that the prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act. Similar view has been taken by Hon'ble Supreme Court in ***Ankur Chaudhary vs. State of Madhya Pradesh : 2024 (4) RCR (Criminal) 172***. Reliance can also be placed upon ***Mohd. Muslim @ Hussain vs. State (NCT of Delhi) : Criminal Appeal No. 943/2023***, decided on 28.03.2023, wherein Hon'ble Supreme Court, while granting concession of regular bail to an accused, from whom commercial quantity of the contraband was allegedly recovered, has held that grant of bail on the 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.

7. In the present case, the petitioner is in custody for the last about 02 years 09 months. He is admittedly not involved in any other case under the NDPS Act. The trial is substantially delayed in this case. Therefore, keeping in view ratio of law as laid down in the aforecited authorities, the FSL report, the delay in conclusion of trial and also in view of the fact that similarly situated co-accused has been granted concession of interim bail by this Court and the attendant facts and circumstances of the case, this Court is of the considered opinion that no useful purpose would be served by keeping him in custody anymore. Accordingly, the present petition is allowed. The petitioner

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is ordered to be released on regular bail, subject to his furnishing personal/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned. However, it will be open for the prosecution to apply for cancellation of bail in case the petitioner is found involved in any other subsequent case.

8. It is made clear that any observation made herein above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

09.09.2024

*Waseem Ansari*

(MANISHA BATRA)  
JUDGE

*Whether speaking/reasoned*

*Yes/No*

*Whether reportable*

*Yes/No*