

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-9873 of 2023(O&M)
Date of Decision: 25.01.2024

Gurcharan Singh
...Petitioner
Versus
State of Punjab
...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Ruhani Chadha, Advocate
For the petitioner.

Mr. J.S. Bhandari, AAG Punjab.

KARAMJIT SINGH, J.

1. The present petition has been filed by the petitioner seeking grant of regular bail in criminal case having FIR No. 231 dated 17.11.2021, registered under Section 22 of Narcotic Drugs and Psychotropic Substances Act (for short the Act) at Police Station Dharmkot, District Moga, to which Section 29 of the Act was added lateron.
2. The case of the prosecution is that on 17.11.2021 police received a secret information against the petitioner and his wife Gurmeet Kaur @ Meeto and thereafter both of them were apprehended by the police while the petitioner was riding on a motor cycle No. PB29Z-8117 and his wife was sitting on the pillion seat and at that time one polythene bag containing 1020 tablets of Alprazolam was recovered, which had fallen from the said motor cycle when it got skidded. Both the accused were arrested at the spot.
3. The counsel for the petitioner submits that the petitioner and his wife were falsely implicated in the present case by the police and that the

wife is already given benefit of regular bail by this Court vide order dated 07.02.2023 (Annexure P-3). It is further submitted that in the instant case there is violation of mandatory provision of Section 42 of the Act, before the alleged recovery was effected. It is further contended that the petitioner is incarcerated for last 02 years and 02 months and the trial is not progressing ahead as prosecution is to examine another 11 witnesses. It is further submitted that in the other criminal cases the petitioner is already enlarged on bail. That in the given circumstances as it will take time for the trial to conclude, no purpose is going to be served by prolonging the judicial custody of the petitioner.

4. The present petition is resisted by the State counsel who on instructions from ASI Jaswinder Singh submits that in the present case commercial quantity of medical intoxicants were recovered from petitioner and his wife and that rigors of Section 37 of the Act are applicable to the present case and that trial is going on. It is further submitted that prosecution has already examined 10 witnesses out of total 21 witnesses and that the petitioner is having criminal history as he is also involved in some other cases under the Act. However, the State counsel has not disputed that the petitioner is in custody for the last more than 02 years and 02 months and that wife of petitioner who was also apprehended at the spot was enlarged on bail vide order (Annexure P-3) by this court and that it will take time for the trial to terminate.

5. I have considered the submissions made by counsel for the parties.

6. It is a moot point as to whether provisions of Section 42 will be applicable in the instant case wherein recovery was effected from a

polythene bag which fell on the ground when the motor cycle driven by the petitioner was skidded. Admittedly, the petitioner is in custody for the last more than 02 years and 02 months and it will take considerable time for completion of the trial as till date prosecution is able to examine only 10 witnesses out of total 21 witnesses. It appears that in the another criminal cases faced by the petitioner under the Act, he is either granted regular bail or is given concession of anticipatory bail as has been submitted by the counsel for the petitioner. In **Satender Kumar Antil Vs. Central Bureau of Investigation, 2022(10) SCC 51**, it was observed by Hon'ble Supreme Court that in case of a long incarceration, which is not attributable to the accused and the delay has been caused by the prosecution, then right of the accused under Article 21 of the Constitution was effected. Further, the long incarceration of 02 years and 02 months results in weakening the rigors of Section 37 of the Act. In the given circumstances, no purpose is going to be served by detaining the petitioner in custody for any longer period as otherwise it will amount to infringement of the rights of the petitioner as provided under Article 21 of the Constitution.

7. In light of the above, without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing of bail bonds and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

25.01.2024

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(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No