



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

203

CRM-M-15316-2023

Date of Decision : **November 29, 2024**

ASHISH KUMAR

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. T.V.S.Lehal Chopra, Advocate
for the petitioner.

Mr. Sahil R. Bakshi, AAG, Punjab.

KULDEEP TIWARI, J. (Oral)

1. Through the instant petition filed under Section 439 of Cr.P.C., the petitioner prays for grant of regular bail in case FIR No.02 dated 10.1.2021, Under Sections 21(c), 29, 61, 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Behrampur, District Gurdaspur.
2. In the instant case, the prosecution agency was set into motion on a statement of Joginder Singh ASI. The relevant extract, which are apt for the disposal of the instant petition, reads as under:-

“On 10.01.2021, at about 05.00 PM, in the area of T Point of Village Dala, a Bolero of White colour bearing registration No. HR-16-V-2055 was seen coming from the side of Gurdaspur. The driver of vehicle was signaled to stop. All the four persons sitting in vehicle were apprehended. On being asked, the driver of vehicle disclosed his name as Gurpreet Singh son of Kewal Singh, resident of Ghullu Majra, P.S. Dera

Bassi, District SAS Nagar, Mohali. The person who was sitting besides the seat of driver, disclosed his name as Sandeep Singh son of Tara Singh, resident of Jain Chowk, Bhawani (Haryana) and remaining two persons, who were sitting on the back seat disclosed their names as Joginder Singh son of Rampat, resident of Village Badunai, Behal, Bhiwani, Haryana and Ashish Kumar son of Jagmohan, resident of Village Badesra, P.S. Bhawani Khera, District Bhawani (Haryana). At that time, Ashish Kumar was carrying a bag of black colour and from the search of that bag, 500 grams Heroin was recovered.”

3. Learned counsel for the petitioner in the asking for the relief (supra) submits that there is a clear cut violation of the provisions of the NDPS Act, as only limited opportunity was given and even there is no compliance of Section 42 of the Act, which are mandatory to comply with. Finally, he submits that the petitioner has suffered incarceration of about 2 years, 7 months, as on today and the petitioner is not involved in any other case of similar nature, rather only one FIR has been registered, that too, on account of the petitioner being declared as a proclaimed offender.

4. The learned State counsel, on the other hand, has vociferously opposed the grant of regular bail to the petitioner and submits that the recovery in the instant case is 500 grams of Heroin, which is double to the commercial quantity, as prescribed under the schedule attached with the NDPS Act, therefore, in view of the rigor as contained under Section 37 of the NDPS Act, the petitioner does not deserve the relief of regular bail. He further submits on instructions imparted to him by the official concerned that out of total 21 cited prosecution witnesses, only 9 have been examined so far.

5. In this case, earlier the petitioner was granted the concession of interim regular bail by the learned trial Court concerned vide order dated

24.2.2021 till the receipt of chemical examiner report with the conditions that in case if the recovered contraband comes out to be commercial quantity then the interim bail shall be deemed to be declined. Thereafter, the challan was filed, however, the petitioner did not surrender before the learned trial Court concerned and he was declared as a proclaimed offender vide order dated 28.2.2022. Later on, he was arrested by the police on dated 14.3.2022 and since then, the petitioner is behind the bars. It is not under dispute that the recovery in the instant case is 500 grams of Heroin, which admittedly falls within the ambit of commercial quantity, however, the long incarceration would certainly dilute the rigors of under Section 37 of NDPS Act. This Court lends support from the law laid down by the Hon'ble Supreme Court in **Rabi Prakash Vs. The State of Odisha, Special Leave to Appeal (Crl.) No(s) 4169/2023, decided on 13.7.2023** while dealing with the twin conditions for bail under Section 37 of the NDPS Act, has observed as under:

“As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. 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.

6. On the touchstone of the recent law laid down by the Hon'ble Supreme Court in Rabi Praksh's case (supra) and the period of incarceration, as suffered by the present petitioner i.e. 2 years, 6 months and 25 days and the trial is only travelled upto half way, this Court deems it appropriate to grant the concession of regular bail to the petitioner. Therefore, without commenting upon the merits and circumstances of the present case, the present petition is **allowed**. The petitioner is ordered to be released on bail on furnishing of heavy bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

7. However, it is clarified that if in future, the petitioner is found indulging in commission of similar offences, as are involved herein, the respondent-State shall be at liberty to make an appropriate application seeking cancellation of regular bail, as granted by this Court. Moreover, anything observed here-in-above shall have no effect on the merits of the trial and is meant for deciding the present petition only.

November 29, 2024
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No