



CRM-M-15225-2023

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

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CRM-M-15225-2023

Date of Decision : **August 28, 2024**

KARAMBIR SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. G.S.Sandhu, Advocate
for the petitioner.

Mr. Pardeep Bajaj, DAG, Punjab.

KULDEEP TIWARI, J. (Oral)

1. Through the instant petition filed under Section 439 Cr.P.C. the petitioner prays for grant of regular bail in case FIR No.35 dated 3.3.2022, Under Section 22(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station City Malout, District Sri Muktsar Sahib.

2. The case, as set up by the prosecution is that on dated 3.3.2022, the petitioner was found in conscious possession of 16 bottles of Corex of 100 ml each and 300 tablets of Carisoma without any license or permit.

3. Learned counsel for the petitioner in the asking for the relief (supra), submits that in the instant case the compliance of Sections 42 and 50 is totally defective. He further submits that the petitioner has clean antecedents as he is not involved in any other case and has suffered



incarceration of about 2 years as on today. He also submits that 300 tablets of Carisoma, as alleged to be recovered from the petitioners does not attract any penal provisions of the NDPS Act and, therefore, the only issue is of 16 bottles of Corex, which were allegedly found to be in conscious possession of the present petitioner.

4. The learned State counsel, on the other hand, has opposed the grant of regular bail to the petitioner and submits that 16 bottles of Corex, as recovered from the present petitioner falls within the ambit of commercial quantity, therefore, the bar under Section 37 of the NDPS Act would come into operation and the petitioner has come out of that legal impediment in order to secure the relief of regular bail. He further submits on instructions imparted to him by ASI Kulwant Singh that in the instant matter, the investigation has already been completed and the challan has been presented on dated 29.7.2022, the charges have been framed on dated 25.8.2022 and 8 prosecution witnesses, out of total 13 cited witnesses by the prosecution in the final report, have been examined. He also placed on record the custody certificate *qua* the petitioner, which reflects that he has suffered incarceration of 1 year, 11 months and 7 days as on today.

ANALYSIS

5. 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. Earlier this Court vide order dated 29.1.2024, had granted the relief of interim regular bail, however, on dated 12.8.2024, this Court had directed the petitioner to surrender within 10 days before the learned trial Court concerned

7. Learned counsel for the petitioner submits that in deference to the directions (supra), as issued by this Court, the petitioner has surrendered and this fact has been admitted by the learned State counsel.

8. On the touchstone of the recent law laid down by the Hon'ble Supreme Court in aforementioned case, and the period of incarceration, as suffered by the present petitioner i.e. 1 year, 11 months and 7 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.

9. However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

August 28, 2024
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(KULDEEP TIWARI)
JUDGE

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