

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

CRM-M-19746-2024

Date of Decision:-29.04.2024

Sharma.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Gurpal Singh Sandhu, Advocate for the Petitioner.

Mr. Harkanwar Jeet Singh, AAG Punjab.

JASJIT SINGH BEDI, J.(ORAL)

The Prayer in this second petition under Section 439 Cr.PC is for the grant of regular bail in case FIR No.65 dated 02.05.2022 under Sections 22(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Kabarwala, District Sri Muktsar Sahib.

2. The brief facts of the case are that while on patrolling duty, two young persons were seen coming on a motorcycle. On seeing the police party, they got perplexed and threw the polythene bag and tried to turn back. The motorcycle stopped and some strips were scattered on the edge of the road. The suspects were apprehended and they disclosed their names as Sharma (petitioner) and Ajay Kumar (since granted bail vide order dated 23.11.2023 in CRM-M-49617-2023). The recovery of 910 tablets of Clobedol-100 SR came to be effected from them.

3. The learned counsel for the petitioner contends that the

petitioner has been falsely implicated in the present case. The mandatory provisions of Sections 42 and 50 of the NDPS Act have not been complied with in their proper perspective. No independent witness was joined at the time of search and seizure. As he was in custody since 02.05.2022 and none of the 14 prosecution witnesses had been examined so far, the trial of the present case was not likely to be concluded anytime soon and therefore, he was entitled to the concession of bail in view of the judgment of the Hon'ble Supreme Court in the case of *Nitish Adhikary @ Bapan Versus The State of West Bengal, SLP (Crl.) Nos.5769/2022 arising out of judgment and order dated 04.05.2022 in CRM(NDPS) No.442/2022, decided on 01.08.2022 and Hasanujjaman & others Versus The State of West Bengal, SLP (Crl.) No.(s).3221/2023 arising out of impugned final judgment and order dated 29.11.2022 in CRM(NDPS) No.1323/2022, decided on 04.05.2023*, more so when his co-accused has been granted bail .

4. On the other hand, the learned State counsel contends that commercial quantity of contraband has been recovered from the petitioner and his co-accused. In addition the petitioner was an accused in 03 other cases under the NDPS Act arising out of FIR No.55 dated 13.05.2017 under Section 15 NDPS Act P.S. Kabarwala, FIR No.177 dated 27.08.22020 under Sections 21/61/85 NDPS Act, P.S. Kabarwala and FIR No.105 dated 24.04.2021 under Sections 21B/61/85 NDPS Act, P.S. Muktsar City. Therefore, in view of the bar contained under Section 37 of the NDPS Act, the petitioner was not entitled to the grant of bail. He, however, concedes that the petitioner was in custody since 02.05.2022, none of the 14 prosecution witnesses had been examined so far and that a co-accused had been granted bail.

5. I have heard learned Counsel for the parties.

6. While it is true that the co-accused of the petitioner namely Ajay Kumar had been granted the concession of bail vide order dated 23.11.2023, the case of the petitioner is on a different footing in as much as whereas Ajay Kumar was a first time offender, the petitioner is an accused in 03 other cases under the NDPS Act. Therefore, the bar under Section 37 of the NDPS Act does not permit the grant of bail to the petitioner as this Court cannot record a satisfaction that the petitioner has not committed any offence and is not likely to commit the offence in future in view of his antecedents.

7. In view of the above, I find no merit in the present petition and the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

April 29, 2024
Vinay

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No