

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-21720-2023
DECIDED ON: 30.01.2024

NASIRDIN

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. P.S. Sekhon, Advocate
for the petitioner.

Mr. Ramdeep Partap Singh, Sr. DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked for the second time under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.214, dated 27.09.2021 (Annexure P-1), under Sections 22/61/85 of NDPS Act, 1985, registered at Police Station City Samana, District Patiala.
2. Learned counsel for the petitioner contends that as per the prosecution story, the present petitioner was nominated as an accused on the basis of disclosure statement made by other co-accused Rinku, from whom the whole recovery was effected, who had kept the intoxicant tablets concealed under the bushes underneath the grass near the bridge of river Hasibtana, Cheeka Ramnagar Road and from the disclosed place, the present petitioner got recovered 39000 tablets of Tramadol Hydrochloride, which were kept in 78 boxes, 11500 intoxicant tablets of Tramadol Hydrochloride, which were kept in 23 boxes, 129 strips each containing 50 tablets of Tramadol Hydrochloride (Total 6450 intoxicant tablets), besides that 18600 loose white tablets were also got recovered from his possession. He further submits

that the alleged recovery of 39000 tablets of Tramadol Hydrochloride and 11500 intoxicant tablets of Tramadol Hydrochloride do not fall within the Narcotic Drugs substance, as is evident from the FSL Report received subsequent to the filing of the challan. He seeks concession of regular bail while relying upon the custody period, which is more than two years and in the light of the fact that co-accused namely Rinku has been granted the concession of regular bail by the Co-ordinate Bench of this Court vide order dated 19.07.2023, passed in CRM-M-16381-2023.

3. On the other hand, learned State counsel has produced custody certificate of the petitioner today in Court, which is taken on record. According to the custody certificate, the petitioner has suffered incarceration for a period of 02 years 03 months and 28 days and is not involved in any other case. He seeks dismissal of the instant petition while urging that the recovery is commercial in nature as huge amount of tablets recovered in 78 and 23 boxes containing 39000 and 11500 intoxicant tablets of Tramadol Hydrochloride.

4. Be that as it may, considering the custody period i.e. 02 years 03 months and 28 days and the fact that the petitioner is not a habitual offender as he is not involved in any other case, which reflects that he is a man of clean antecedents and probability of his false implication in the instant FIR cannot be ruled out, which is yet to be adjudicated by the trial Court, wherein, the case is at the stage of prosecution evidence and the fact that the trial is at the fag end as out of total 10 prosecution witnesses, only seven witnesses have been examined.

5. This Court is sanguine of the fact that according to the proposition settled by the Apex Court that keeping somebody behind the bars, till his guilt is proved, for an indefinite period amounts to infringement of his right to life and

liberty, as enshrined under Article 21 of Constitution of India and is against the principle “*bail is a rule and jail is an exception*”.

6. In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

7. In the afore-said terms, the present petition is hereby allowed.

8. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

30.01.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

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