



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

218 **CRM-M-28393-2024**
Date of Decision : November 18, 2024

PRABHU SHAN **-PETITIONER**
STATE OF HARYANA **-RESPONDENT**
V/S

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Rakesh Kumar Lathwal, Advocate
for the petitioner.

Mr. Bhupender Singh, D.A.G., Haryana.

KULDEEP TIWARI, J. (ORAL)

- Through this second petition cast under Section 439 of the Cr.P.C., the petitioner prays for him being granted the concession of regular bail, in case FIR No.187 dated 20.04.2022, under Sections 20/27-A/29 (added subsequently) of the N.D.P.S. Act, and, Section 201 of the IPC, registered at P.S. Sampla, District Rohtak.
- Succinctly stated, the recovery of 06 kgs 100 grams of Charas from the possession of the petitioner has constituted the bedrock for registration of the present FIR.
- The learned counsel for the petitioner opts not to address any arguments on merits of the case, rather confines the sphere of his arguments only to the period of incarceration suffered by the petitioner, besides the stage of trial. He submits that, since the trial is at initial stage, inasmuch as, only 01 prosecution witness, out of total 22 witnesses, has been examined so far, therefore, no fruitful purpose would be served by



keeping the petitioner behind the bars, who has clean antecedents and already suffered incarceration of approx. 02 years and 07 months.

4. *Per contra*, the learned State counsel vociferously opposes the grant of regular bail to the petitioner, on the ground that, since the recovered contraband falls within the category of “commercial quantity”, therefore, in view of the statutory bar engrafted in Section 37 of the N.D.P.S. Act, the petitioner does not deserve the concession of bail.

5. Although the learned State counsel opposes the grant of bail to the petitioner, however, on instructions imparted to him by the official/officer concerned, he verifies that, out of total 22 witnesses, only 01 prosecution witness has been examined so far. He also files the custody certificate of the petitioner, which is taken on record.

6. This Court has heard the submissions made by the learned counsels for the parties and perused the record.

7. Although it is not under dispute that the recovered contraband falls within the ambit of “commercial quantity”, thus attracting the rigor of Section 37 of the N.D.P.S. Act, however, it is also not under dispute that sufficient period of incarceration dilutes the stringent conditions of Section 37 of the N.D.P.S. Act. Gainful reference in this regard can be made to **“Rabi Prakash Versus The State of Odisha”, Special Leave to Appeal (Criminal) No.4169 of 2023**, wherein, the Hon’ble Supreme Court has discussed the effect of Section 37 of the NDPS Act in such like cases of long custody. The relevant portion of the aforesaid judgment contained in para No.4 is reproduced as under:-



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“4. 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.”

8. Therefore, be that as it may, considering the fact that: (i) as per the custody certificate dated 14.11.2024, as placed on record by the learned State counsel, the petitioner has clean antecedents and suffered incarceration of 02 years, 06 months and 17 days till 14.11.2024; (ii) there is no likelihood of the trial concluding anytime soon, inasmuch as, out of total 22 witnesses, only 01 prosecution witness has been examined so far; 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 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.

November 18, 2024
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(KULDEEP TIWARI)
JUDGE

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