

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-33639-2022 (O&M)
Reserved on 14.02.2024
Date of decision: 19.02.2024

Suresh Kumar ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. Arjunveer Sharma, Advocate for the petitioner.

Mr. J.S. Dhaliwal, AAG, Punjab.

KARAMJIT SINGH, J. (ORAL)

1. The present petition has been filed by the petitioner under Section 439 Cr.P.C. for grant of regular bail in case having FIR No.224 dated 17.12.2021, under Sections 22 of NDPS Act, at Police Station Special Task Force, District STF Wing, SAS Nagar (Mohali).
2. The allegations in nutshell are that on 17.12.2021, police recovered 104 boxes each having 500 strips of 10 tablets each of Tramwel-SR-100 having batch number from the petitioner who at that time was having Swift car number PB-02-DR-6200 and the aforesaid recovery was effected from dicky of the said car. The petitioner was arrested at the spot. After completion of investigation, police presented challan against the petitioner.
3. The counsel appearing on behalf of the petitioner has *inter alia* contended that the petitioner was falsely implicated in the present case and

no such contraband was recovered from his possession. The counsel has further contended that as per allegations, the medical intoxicants which were recovered at the spot, were having batch number. That however, in the report of FSL (Annexure P-2), there is no mention of any such batch number, date of manufacture and expiry date of the tablets alleged to be recovered in the present case. The counsel for the petitioner has further contended that petitioner is in custody for the last more than 2 years and the trial is not progressing ahead and that in the another criminal case faced by the petitioner under NDPS Act, the petitioner is already given concession of bail. The counsel for the petitioner has further submitted that the prolonged trial also infringes the fundamental rights of the petitioner as provided under Article 21 of the Constitution of India. The counsel for the petitioner has further contended that the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No.8900/2022 titled as Jitendra Jain Vs. NCB and Another decided on 16.12.2022, granted regular bail to the accused in a case registered under NDPS Act with regard to recovery of commercial quantity of contraband on the ground that the accused was in custody for 2 years and trial would take time.

4. The present petition has been resisted by the State counsel who submits that commercial quantity of medical intoxicants were recovered from the petitioner by police on 17.12.2021 and that trial is going on. It has been further contended that rigors of Section 37 NDPS Act are applicable to the present case and as such the petitioner is not entitled to concession of regular bail at this stage. However, the State counsel on instructions from SI Harpal Singh has not disputed the fact that the petitioner is incarcerated for

last 2 years and that in the another criminal case registered under NDPS Act, the petitioner is already enlarged on bail. The State counsel has also not disputed that the trial is proceeding at very slow pace and it will take considerable time for the trial to conclude.

5. I have considered the submissions made by counsel for the parties.

6. The point raised by the counsel for the petitioner that as per recovery memo, the medical intoxicants stated to be recovered were having batch number, but no such batch number is therein report of FSL (Annexure P-2), is to be considered by the trial Court at the relevant stage of trial.

7. The present case being relating to recovery of commercial quantity of contraband, the strict provisions of Section 37 NDPS Act are applicable to the petitioner. At the same time, one cannot loose sight of the fact that petitioner is behind the bars for last more than 2 years. No doubt, the petitioner is also involved in one another case under NDPS Act, wherein the petitioner is already given benefit of regular bail. As has been admitted by the State counsel, the trial is going at a snail's pace and it will take considerable time for the trial to culminate.

8. Personal liberty of a person is one of the cherished object of the Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution of India. In case, the trial is prolonged, bail could be granted to the accused, in case trial is delayed due to no fault of the accused, as the prolonged incarceration due to exponential delay in trial infringes Article 21 of the Constitution of India and this further amounts to

dilution of the rigors of Section 37 of NDPS Act.

9. In the present case, the State counsel has failed to show that there is a delay in trial proceedings due to act and conduct of the petitioner. Rather the delay in proceeding further ahead with the trial is on the part of the prosecution. In the given circumstances, as trial will take time to conclude, no gainful purpose is going to be served by detaining the petitioner in custody for any longer period.

10. In light of the above, without expressing any opinion on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/CJM/Duty Magistrate concerned.

11. Pending application, if any, stands disposed of.

19.02.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No