



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(226) CRM-M-32654-2024(O&M)
DATE OF DECISION:10.12.2024

Charanjit Singh @ Sabi

.....Petitioner

VERSUS

State of Punjab

.....Respondent

CORAM HON'BLE MR.JUSTICE KULDEEP TIWARI

Present Mr.Kulwinder Singh, Advocate,
for the petitioner.

Ms. Avneet, AAG, Punjab.

KULDEEP TIWARI, J (ORAL)

1. Through the instant petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.0070 dated 30.07.2023, under Section 22 of NDPS Act 61 of 1985, registered at Police Station Garhdiwala, District Hoshiarpur, Punjab.

2. In the instant case, the petitioner is arrested carrying 13 injections of Buprenorphine, and the total weight of injections comes out to be 25.27 gms, which admittedly falls within the ambit of commercial quantity as under the Schedule attached with the NDPS Act, the commercial quantity prescribed is more than 20 gms.

3. Learned counsel for the petitioner in asking for the relief though made an argument on the merits of the case that the mandatory compliance of Section 50 and 42 of the NDPS Act, has not been made by the prosecution agency rendering his arrest as illegal. However, his main sphere of arguments is the long incarceration suffered by the petitioner in the instant case and the stage of the trial. He submitted that the petitioner has suffered incarceration of



one year and four months in the instant case whereas recovery is marginally above the commercial quantity. He further submitted that the petitioner is stated to be involved in two other cases of the NDPS Act, but in both the cases he is on regular bail, and the quantity recovered in both cases is admittedly non commercial in nature.

4. The State counsel today filed short reply by way of affidavit in deference to the directions issued by this Court on 21.10.2024 and also custody certificate qua the petitioner, the same are taken on record.

5. Leaned State counsel while opposing the grant of regular bail submitted that since the recovered quantity falls within the ambit of commercial quantity, therefore, the rigor of Section 37 of the NDPS Act would dis-entitle the present petitioner to seek the relief of regular bail. She further highlighted the other pending matters qua the petitioner submitted that the petitioner is a habitual offender.

7. This Court has considered the rival submissions made by counsel for the parties concerned and has gone through the entire case file.

8. This Court is of the considered view that the long incarceration would dilute the effect of Section 37 of the NDPS Act and for that this Court find rigor the ratio laid down by Hon'ble Supreme Court in "**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:-

"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.”

9. Further, this Court has considered that in the instant case, the trial has reached only half way mark, and the recovery effected from the present petitioner is marginally above the commercial quantity. Therefore, considering the days of incarceration; stage of trial, this Court deems it fit and appropriate to extend the benefit of regular bail to the petitioner. Therefore, the present petition is **allowed**.

10. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

11. Pending application, if any, shall stand disposed.

12. 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.

10.12.2024
mamta

(KULDEEP TIWARI)
JUDGE

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