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

(225)

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Date of Decision : 02.12.2024

Tarsem Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Gurpal Singh Sandhu, Advocate for
Mr. S.S. Dhillon, Advocate
for the petitioner.

Ms. Manjot Kaur, AAG, Punjab.

KULDEEP TIWARI, J.(Oral)

1. Through the instant petition, as cast under Section 439 of Cr.P.C., a prayer is made for grant of relief of regular bail to the petitioner, in case FIR No.284 dated 04.12.2022 (Annexure P-1), under Section 22-C of the NDPS Act, 1985, registered at Police Station Lambi, District Sri Muktsar Sahib.

2. The allegations against the present petition in the FIR (supra), are that he was carrying 2000 tablets of Cypremal-100 SR, without any permit or licence, containing the salt of Tramadol Hydrochloride, and the total weight comes out to be 838 grams. The relevant extracts of the FIR (supra), reads as under :-

“Head Officer, Police Station Lambi, "Fateh" today I ASI Sukhdev Singh No. 514/SMS alongwith, senior Constable Kuljeet Singh no. 1169/SMS and senior constable Gurpreet Singh no. 183/SMS were going on private having printer and laptop installed and were going to village Vanwala Anoka from lambi for patrolling and



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checking suspicious person and when police officials reached one kilometer ahead from bus stand of Lambi to village Vanwala Anuka then from front side one clean shaved person was seen carrying plastic bag in his hand and I ASI with help of other officials apprehended that person and asked his name and address upon which he told his name Tarsem Singh s/o Darshan Singh s/o Ghaggu Ram resident of Bazighar Mohalla, Lambi and to whom I ASI told about myself and following the Section 50 of NDPS ACT told that I SI Mangal Singh appointed in CIA Staff Sri Muktsar Sahib and I am wearing my uniform and my name plate is on my uniform. To whom I asked that I have suspicion that there is intoxicant substance in your plastic bag which is in your possession and I want to search plastic bag in your possession but as per law of intoxicant substances you have right that you can get your search done from any magistrate or Gazetted officer upon which he said that he want to get his search from any Gazetted officer. Upon which consent memo was prepared upon which Tarsem singh signed in english language and witness also signed on that then 1 SI from my Mobile number 94171-21450 called to Shri Rajesh Sanehi DSP (D) Sri Muktsar Sahib on his mobile number 79862-52918 and told about the situation and requested to reach on the spot, upon which Rajesh Sanehi DSP (D) Sri Muktsar Sahib along with Gunmens reached on the spot on Government Balero Vehicle Number PB-30-R-9771 and I told him about the situation then after following the section 50(1) of NDPS ACT Shri Rajesh Sanehi DSP (D) Sri Muktsar Sahib told Tarsem Singh that I Rajesh Sanehi is appointed DSP(D) at Sri Muktsar Sahib and I am a Gazetted officer of Punjab Government and I have suspicion that you have a intoxicant substance and I want to search you and your plastic bag but as per the law on intoxicant substances you have right that you can get your



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search done from other gazetted Officer or any Magistrate or they can be called at the spot upon which abovesaid Tarsem Singh said that I have full faith on you and you can search me and my plastic bag upon which DSP prepared consent memo upon which witnesses signed and abovesaid Tarsem Singh signed in English language. Then on instruction of DSP(D) Sri Muktsar Sahib I SI searched the plastic bag of Tarsem Singh in front of witnesses and from that intoxicant tablets were recovered from two black plastic polythine and from first polythine 150 strips mark CYPREMAL-100SR, 10/10 tablets in each strip total 1500 Tablets having batch number AIT 2002 MANUFACTURE DATE 02/2022 EXP. 2025 and from second polythine 50 Strips mark CYPREMAL-100 SR, 10/10 tablets in each strip total 500 tablets having Batch number AIT 2001 MANUFACTURE DATE 02/2022 EXP. 2025 were recovered and same were put in those plastic polythines and prepared pulada after putting them in one white color plastic bag and marked with my stamp MS and form M-29 was prepared and pulanda of intoxicant tablets testified by stamp mark RS of DSP(D) Sri Muktsar Sahib and also verified the Form M-29 with stamp RS. I SI handed over stamp to ASI Sukhdev Singh No. 514/SMS and DSP (D) Sri Muktsar Sahib kept stamp with himself. Then I SI conducted the personal search of Tarsem Singh and nothing objectionable substance was recovered. Recovery memo was also prepared and on that Tarsem Singh signed in English language and witnesses also signed on that. Then I SI taken pulanda of intoxicant Tablets and form M-29 into police possession vide different recovery memo. Upon recovery memo witnesses also signed and verified by DSP(D) Sri Muktsar Sahib. Abovesaid Tarsem Singh could not produce any permit and bill for keeping intoxicant tablets in his possession and Tarsem Singh s/o Darshan Singh S/o Ghamu Ram



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resident of Bazighar Muhalla Lambi committed the offence u/s 22C/61/85 Of NDPS ACT for keeping 2000 intoxicant tablets in his possession. Upon which ruga has been sent to police station against Tarsem Singh s/o Darshan Singh s/o Ghamu Ram resident of Bazighar Muhalla Lambi for registartion of FIR through senior constable Gurpreet Singh No. 183/SMS. Kindly inform after registartion of FIR and special reports may kindly be issued. Kindly inform the PCR through Wireless. I SI is busy in investigation with other officials.”

3. On asking for the relief (supra), the first argument as submitted by the learned counsel for the petitioner is merely upon the period of incarceration suffered by the present petitioner, that the fact that the petitioner has clean antecedents, and is a first time offender. He submitted that the petitioner has suffered incarceration of about 02 years, as on today, and till date, only three prosecution witnesses have been examined, out of total 15 witnesses, as cited by the prosecution.

4. On the other hand, learned State counsel has strongly opposed the asked for relief and submits that the recovery effected from the present petitioner, does fall under the ambit of commercial quantity, and therefore, in view of the rigor encapsulated under Section 37 of the NDPS Act, the petitioner is not entitled for the asked for relief, as he has not satisfied both the conditions mentioned thereof.

5. Further, learned State counsel, on instructions imparted to him from the Investigating Officer concerned, submits that the final report has already been filed and charges have been framed, and out of total 15 prosecution witnesses, three witnesses have been examined, seven given up, and five witnesses are yet to be examined.



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6. Learned State counsel has also placed on record the custody certificate dated 29.11.2024, qua the petitioner, today in the Court. The same is taken on record.

7. It is not in dispute that only three prosecution witnesses have been examined, out of total 15 witnesses, whereas, seven prosecution witnesses have been given up and five witnesses are yet to be examined, whereas, the petitioner has suffered incarceration of 01 year, 11 months and 23 days, as on today, and has clean antecedents. So far as, the rigor of Section 37 of the NDPS Act, is concerned, this Court, in a number of judgments has already observed that long incarceration would dilute the rigor of Section 37 of the NDPS Act.

8. This Court finds vigor from the judgment of the Hon'ble Supreme Court in ***“Rabi Prakash Versus The State of Odisha”, Special Leave to Appeal (Criminal) No.4169 of 2023***, wherein, the Court has also 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. This Court has heard the rival submissions, as made by the learned counsel for the parties concerned, and is of the view that the instant petition is amenable to be allowed for the reasons extracted hereinafter :-

- (i) considering the period of incarceration suffered by the petitioner,*
- (ii) specifically the fact that the petitioner is not involved in any other case, and has clean antecedents,*
- (iii) that only three prosecution witnesses have been examined, out of total 15 witnesses, whereas, seven prosecution witnesses have been given up and five witnesses are yet to be examined.*
- (iv) the probative value of the allegations, as alleged by the prosecution, are yet to be established by leading cogent evidence, by the prosecution.*

10. Without observing anything on the merits of the case, considering the period of incarceration suffered by the petitioner, and the stage of the trial, this Court deems it appropriate to grant the relief of regular bail to the petitioner. Accordingly, the instant petition is **allowed**.

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

12. However, anything observed hereinabove shall have no effect on the merits of the case and is meant for deciding the present petition only.

(KULDEEP TIWARI)
JUDGE

December 02, 2024
Manpreet

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