



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

225

CRM-M-43756-2024

Date of Decision :03.12.2024

KULJINDER SINGH ALIAS BAU

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. J.S.Bains, Advocate
for the petitioner.

Ms. Manjot Kaur, 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.100, dated 05.05.2021, under Sections 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), registered at Police Station Gharinda, District Amritsar.

2. The case as set up by the prosecution, through the instant FIR, the relevant thereof is extracted hereinafter:-

“Statement 1215 PS of LR/ASI Amanjit Singh Gharinda District Amritsar (Rural) Today I ASI alongwith ASI Amolkh Singh 90, ASI Gurcharan Singh 1940, CT Prince Pal Singh 1850 werer going on private vehicle on patrolling duty in seach of bad elements form village Lahorimal to hoshair Nagar Cheecha and when the police party reached near the T point of village Hoshair Nagar Kalowal then one person was seeing coming walking from village Kalowal side and got perplexed after seeing the police party and tried to turn back and was about to throw one polythene bag after taking out from his right pocket of the pent and I ASI alongwith other apprehended him and on enquiry he disclosed his name as Kuljinder

Singh @ Bau son of Avtar Singh R/o caste Jat R/o Kalowal Ps Gharinda and when he was asked about the polythene bag then he told that it contained intoxicant tablets which falls under the NDPS Act. I being of local rank cannot proceed and therefore you are being informed on telephone you can eon the spot and I handed over the aforesaid Kuljinder Singh and polythene bag to you. Action be taken Sd/ Amarjit Singh.”

3. In asking for the relief (*supra*), learned counsel for the petitioner submits that the petitioner has suffered incarceration of more than 2 year and 4 months, as on today. Though he is stated to be involved in one other case under the NDPS Act, but in that case he has been acquitted.

4. He further submits that the petitioner was initially arrested on 05.05.2019, however, he was granted the interim relief. Thereafter, upon filing of the FSL report, petitioner was rearrested on 22.08.2022.

5. He also submits that the recovery of alleged contraband, as effected from the present petitioner is of 13.37 grams of Etizolam, which admittedly falls within the ambit of commercial quantity.

6. He in addition submits that the *challan* has already been presented way back on 22.08.2022, and a total 09 witnesses have been cited by the prosecution in the final report, and out of them only 01 witness has been examined so far, therefore, further custody of the present petitioner is not warranted.

7. *Per contra*, the learned State counsel vociferously opposed the asked for relief of grant of regular bail to the petitioner, and submits that the recovery effected from the present petitioner in the instant case falls within the ambit of commercial quantity, as per the schedule

attached to the NDPS Act, therefore, the vigor of Section 37 of the NDPS Act, would come in operation and the present petitioner does not satisfy such condition, he was involved in one other case under the NDPS Act.

8. She has also placed on record a custody certificate *qua* the petitioner, which is taken on record, and a perusal of the same reveals that the petitioner has suffered incarceration of 02 year 04 months and 01 day, as on today.

9. She further submits, on instructions imparted to her by the police official concerned, that in the instant case final report was filed way back on 22.08.2022, and out of the total 09 witnesses as cited by the prosecution, 01 has been examined.

10. This Court has considered the rival submissions made by learned counsel for the parties concerned, and has gone through the entire case file, and is of the considered opinion that the instant petition is amenable for being **allowed**.

11. The reason for forming the above inference emanates from the factum that:

- (i) the petitioner has suffered incarceration of 02 years 04 months and 01 day, as on today;**
- (ii) out of the total 09 prosecution witness, only 01 has been examined, till date;**
- (iii) though the petitioner is stated to be involved in one other criminal case under NDPS Act, however, he has earned acquittal in that case;**
- (iv) no fruitful purpose would be served by keeping the petitioner behind the bars;**
- (v) trial is not likely to conclude anytime soon;**

12. The above view of this Court is fortified by the ratio of the

judgment laid down in "**Rabi Prakash Versus The State of Odisha**", **Special Leave to Appeal (Criminal) No.4169 of 2023**, wherein the 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."

13. Considering the hereinabove made discussion, this Court deems it fit and 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.

14. However, anything observed here-in-above shall have no effect on the merits of the trial, and is only meant for deciding the present petition.

15. However, it is clarified that if in future, the petitioner is found indulging in commission of similar offences, as is involved herein, the respondent-State shall be at liberty to make an appropriate application seeking cancellation of regular bail, as granted by this Court.

16. All pending application(s), if any, also stand **disposed** of accordingly.

December 03, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

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