

S. No.231

2024:PHHC:005636

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

CRM-M-64740 of 2023

Date of Decision:16.01.2024

Gobind Singh @ Gora @ Goga

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Raj Kumar Chandana, Advocate
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

DEEPAK GUPTA, J. (Oral)

By way of present petition filed under Section 439 Cr.P.C, petitioner has prayed for grant of regular bail in case FIR No.0278 dated 23.11.2021 registered under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') at Police Station City Sough Moga, District Moga.

Status report by way of affidavit of Shri Sukhwinder Singh Brar, Deputy Superintendent of Police (City), Moga, District Moga has been filed on behalf of respondent- State.

This is the third petition. First petition was dismissed as withdrawn vide order dated 25.01.2023 passed in CRM-M-15260 of 2022; whereas second petition was dismissed as withdrawn on 28.08.2023 as per the details given in para No.21 of the petition.

As per prosecution allegations, 220 tablets of ETM weighing 0.05 gram each, containing salt of Etizolam with total weight of 28.38 grams were recovered from possession of the petitioner on 23.11.2021.

Learned counsel for the petitioner contends that the petitioner is in custody for the last more than two years and that examination of even a single witness has not been concluded so far.

Learned counsel for the petitioner further contends that the petitioner has been falsely implicated. Though details of the previous cases in which petitioner is involved are also given but it is contended that petitioner was convicted under Section 174-A IPC and is on bail in another case pertaining to the NDPS Act.

Learned State Counsel has opposed the bail petition by pointing out that recovered quantity of contraband is more than 11 times of commercial quantity as the commercial quantity for Etizolam starts from 2.5 grams. However, learned State Counsel concedes the fact on the basis of status report filed before the Court that though the challan was presented in Court on 18.05.2022 and charges were framed on 30.07.2022 but examination of not even a single witness has been concluded so far.

As per the custody certificate placed on record, petitioner is in custody for the last 02 years and 23 days. He is involved in three other cases, one of which pertained to the NDPS Act and he is on bail in that case whereas he has been earlier convicted in case under Section 174-A IPC.

No doubt, recovered quantity falls in the commercial category but at the same time, the Court cannot overlook the custody period of the petitioner which is more than two years and the fact that not even examination of single witness has been concluded so far. In these facts and circumstances, rigors of Section 37 of the NDPS Act are required to be balanced with Article 21 of the

Constitution of India guaranteeing fundamental right to life and liberty, of which speedy trial forms a part.

Having regard to all the afore-said facts and circumstances, but without commenting anything on the merits of the case, present petition is allowed. Petitioner is admitted to bail on his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court/ Duty Magistrate concerned, on usual terms and conditions.

January 16, 2024

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Whether Speaking/reasoned

Whether Reportable

(DEEPAK GUPTA)

JUDGE

Yes/No

Yes/No