

2025:PHHC:065990



240.

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

CRM-M-4293-2025

Date of decision: 15.05.2025

Varinder

.... Petitioner

Versus

State of U.T., Chandigarh

.... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Prateek Pandit, Advocate, for the petitioner.

Mr. J.S. Toor, APP, U.T., Chandigarh.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is seeking regular bail under Section 483 of BNSS, 2023, in case FIR No.20, dated 18.02.2023, under Section 22 of NDPS Act, 1985 (Section 21 of NDPS Act and Section 25 of Arms Act deleted lateron, and Section 22 of NDPS Act added), registered at Police Station Mauli Jagran, U.T., Chandigarh, wherein allegations have been levelled against the petitioner of having been found in conscious possession of commercial quantity of contraband, namely, 820 tablets of alprazolam and 105 bottles of wincirex cough syrup containing codeine phosphate.

2. Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated owing to a prior personal altercation with one ASI Azad Singh, who is alleged to have planted the recovery maliciously in connivance with another constable. It is submitted

that the petitioner, a serving Personal Assistant in the Ministry of Water Resources, Government of India, is a law abiding citizen with no previous criminal antecedents.

3. It has been further vehemently argued that the statutory safeguards embedded in the NDPS Act were grossly violated during the course of investigation. In particular, non-compliance with the provisions of Section 42 of NDPS Act has been alleged on the ground that the alleged secret information was neither reduced into writing nor forwarded to superior officers as required. Further, it is contended that the mandatory provisions of Section 50 of NDPS Act were disregarded. Additional procedural irregularities under Sections 52A and 57 of the NDPS Act have also been highlighted with respect to failure in preparing proper inventories and delay in forwarding reports to superior officers. Moreover, the competency of ASI Azad Singh to effectuate the search and seizure has been questioned on the basis that he was acting only as an ad hoc SHO, and therefore, was not authorized to carry out search under the NDPS Act.

4. It has still further been submitted that the petitioner has been in custody since 18.02.2023, the investigation stands concluded and the challan has been filed. Out of 19 prosecution witnesses, only 08 have been examined so far. Given the aforementioned facts and circumstances, it is urged that the petitioner deserves to be extended the concession of bail. In support, learned counsel has placed reliance upon *State of Haryana Versus Anil Kumar @ Shukla and another, 2024(1) RCR (Criminal) 779; Bikkar Singh Versus State of Punjab, 2006(3) RCR (Criminal) 16; Gurjant*

Singh @ Janta Versus State of Punjab, 2013(4) RCR (Criminal) 874;
Gursewak Singh Versus State of Punjab, 2016(3) RCR (Criminal) 1031;
Gurjit Singh Versus State of Punjab, Law Finder Doc Id # 954802.

5. *Per contra*, learned counsel appearing on behalf of UT, Chandigarh has vehemently opposed the prayer and submissions made by the counsel opposite. He, on instructions, has submitted that the contraband recovered is huge from the petitioner and falls within the commercial quantity under the NDPS Act. Both alprazolam and codeine phosphate are specifically enumerated under the schedule to the Act and qualify as psychotropic and narcotic substances respectively. It has also been submitted that it is highly implausible that on account of some animosity, the police would have planted such a huge recovery upon the petitioner. Still further, it has been emphasized that Section 37 of the NDPS Act is squarely attracted, which imposes a stringent bar on the grant of bail in cases involving commercial quantity of contraband.

6. As regards alleged procedural lapses, learned counsel appearing on behalf of UT, Chandigarh contends that these are matters of evidence to be adjudicated at the stage of trial. The competence of the Investigating Officer or the question of whether procedural safeguards under Sections 42 and 50 of the NDPS Act were observed, cannot form the sole basis for grant of bail in the face of a prime facie credible and substantial recovery. It is further submitted that the trial is progressing at a considerably good pace, and only 10 witnesses remain to be examined, most of whom are formal in nature. It has still further been submitted, on

instructions, that the next date of hearing before the learned Trial Court is 31.05.2025 when some more prosecution witnesses would positively be examined. Learned counsel appearing on behalf of UT, Chandigarh has further submitted that the prosecution would ensure that the witnesses appear on each and every date of hearing so that no obstacle is created in the expeditious conclusion of the trial.

7. I have heard learned counsel for the parties and perused the material placed on record.

8. The recovery effected in the present case is undeniably of a commercial quantity. The applicability of Section 37 of the NDPS Act is, therefore, not in dispute.

9. The contention of false implication, premised on personal enmity with the Investigating Officer, remains a matter of defence, and cannot be substantiated at this stage without appreciation of evidence at trial. Likewise, the alleged procedural violations of some of the provisions of the NDPS Act, as well as the challenge to the competence of the officer require detailed factual examination and cannot be conclusively determined at the stage of bail. Procedural infirmities alone, when weighed against substantial recovery of commercial quantity, do not *ipso facto* warrant bail.

10. Further, the fact that the petitioner has been in custody since February, 2023, although not insignificant, must be balanced against the nature and gravity of the allegations, as well as the statutory restrictions under Section 37 of the NDPS Act. The trial, as per submissions made by the learned counsel appearing on behalf of UT, Chandigarh, is progressing

at a good pace and just because the entire evidence has not yet been recorded by the prosecution would not by itself tilt the balance in favour of bail in light of the gravity of the offence.

11. In view of the facts and circumstances as enumerated hereinabove, this Court does not deem it fit to extend the concession of bail to the petitioner, who has approached this Court for the second time round.

12. Accordingly, the present petition is dismissed.

13. However, learned Trial Court is directed to ensure expeditious conclusion of the trial at the earliest.

14. Needless to add, both the prosecution and the defence shall extend full cooperation in the expeditious conclusion of the trial.

15. It is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

May 15, 2025

sanjeev

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No