



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

212

**CRM-M-5060-2023 (O&M)
Date of Decision: 13.02.2025**

Parmeshwar Singh @ Raju

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Atul Lakhanpal, Senior Advocate assisted by
Mr. R.S. Chahal, Advocate,
for the petitioner.

Ms. Avneet, AAG, Punjab.

MAHABIR SINGH SINDHU, J.

Present second petition has been filed under Section 439 of Code of Criminal Procedure, 1973 for seeking bail pending trial in FIR No. 65 dated 27.04.2021, registered under Sections 15, 22-C and 29 of Narcotic Drugs & Psychotropic Substances Act, 1985, (for short 'NDPS Act') at Police Station Subhanpur, District Kapurthala.

2. Allegations are that petitioner was found in possession of 5000 intoxicant tablets (Alprazolam weighing 267.75 grams), without any permit/license.

3. Contends that petitioner is in custody since 27.04.2021; after investigation, report under Section 173 Cr.P.C. was submitted on 07.09.2021 but charges are yet to be considered. Further contends that trial is likely to take sufficient long time.



4. *Per contra*, learned State Counsel, on instructions from quarter concerned, has acknowledged the above factual position; but opposes the prayer on the premise that commercial quantity of contraband was recovered from petitioner and as such, bar under Section 37 of NDPS Act, would apply.

5. Heard learned counsel for both the sides and perused the paper book.

6. This Court granted interim bail to the petitioner on 06.12.2023 in the following manner:-

“Learned Sr. counsel, inter alia, contends that petitioner is in custody since 27.04.2021; challan was presented way back on 07.09.2021; but, till date charges have not been framed.

Learned State counsel seeks time to apprise the Court regarding non-consideration of charges.

Posted for 21.02.2024.

In the meantime, petitioner is ordered to be released on interim bail in the present case, till the next date of hearing, on furnishing bail bonds and surety bonds to the satisfaction of learned trial Court/Duty Magistrate concerned.”

7. It is not in dispute that petitioner remained in custody from 27.04.2021 to 06.12.2023; report under Section 173 Cr.P.C. was submitted on 07.09.2021 but charges are yet to be considered. Learned State counsel is also not able to controvert that after granting interim bail vide order dated 06.12.2023, petitioner is regularly appearing before learned Special Court and never misused the concession in any manner.

8. Thus, in such a scenario, there is no hesitation to record the “Twin Test” satisfaction in favour of the petitioner as per Section 37(1)(ii) of the NDPS Act in the following manner:-

(i) As per the case of prosecution, it was a chance recovery however, the Police officer(s)/official(s) had already been carrying weighing machine with them. This fact prima facie shows that the recovery was effected on the basis of secret information; hence compliance of Section 42 of the



NDPS Act was mandatory which, concededly, was not adhered to by the raiding party;
(ii) After registration of the FIR in question, petitioner has not been involved in any case under the NDPS Act.

9. Needless to say that above “Twin Test” satisfaction has been recorded only for the purpose of bail application and same be not treated as an opinion on pending trial.
10. It is also not in dispute that petitioner remained in custody for about 2 years and 7 months and charges are yet to be considered; thus conclusion of trial is likely to take sufficient long time.
11. Consequently, present petition is allowed. Interim order dated 06.12.2023 is made absolute. Petitioner shall be admitted to bail on his furnishing bail/surety bonds to the satisfaction of learned Special Court/Chief Judicial Magistrate/Duty Magistrate concerned.
12. Petitioner shall appear on each & every date of hearing and to fully co-operate with learned Special Court without seeking any unnecessary adjournment(s).
13. The above observations be not construed as an expression of opinion on the merits of the case.
14. It is clarified that in case of recurrence or any misuse of concession of bail on the part of petitioner, State would be at liberty to move an appropriate application for recalling of this order.

Pending application(s), if any, shall also stand disposed off.

13.02.2025

(MAHABIR SINGH SINDHU)
JUDGE

SN

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