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

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CRM-M-8021-2025 (O&M)

Date of decision: 08.04.2025

Ashwani Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Varun Sharma, Advocate
for the petitioner.

Ms. Sakshi Bakshi, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The instant one is the second petition, which has been filed by the petitioner under Section 439 Cr.P.C. seeking grant of regular bail in case bearing FIR No. 0165 dated 24.10.2022, registered under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Sangat, District Bathinda. The first petition, bearing number **CRM-M-63902-2023**, was dismissed by this Court, vide order dated 19.11.2024 by passing the following order:

“....3. In deference to the directions issued by this Court on 27.05.2024, the learned State counsel has filed reply, on affidavit of Heena Gupta, PPS, Deputy Superintendent of Police, Rural, Bathinda, which is taken on record. Moreover, on instructions imparted to him by S.I. Chet Singh, the learned State counsel has informed this Court that, out of total 25 prosecution witnesses, only 06 witnesses have been examined so far.

3. Taking into account the huge quantity of the recovered contraband (03 kgs heroin), which clearly falls within the

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ambit of “commercial quantity”, and, which was recovered from the vehicle driven by the petitioner, this Court is not inclined to grant the relief of regular bail to the petitioner.

4. However, considering the period of incarceration suffered by the petitioner, which comes to approx. 02 years, coupled with the fact that, only 06 witnesses, out of total 25 prosecution witnesses, have been examined so far, this Court deems it appropriate to direct the learned trial Court to make all efforts to expedite the conclusion of trial. Moreover, the S.S.P. concerned is also directed to ensure the presence of all remaining prosecution witnesses, on each and every date, as fixed by the learned trial Court concerned, for their examination.

5. Consequently, the instant petition is dismissed, however, with direction (*supra*).

6. A copy of this order be forthwith sent to the learned trial Court, and, to the S.S.P. concerned for information and compliance.”

2. The only argument which has been raised by learned counsel for the petitioner for grant of regular bail to the petitioner is that despite the aforesaid direction, in addition to five already examined witnesses, only one more witness has been examined so far. Hence, the extended period of incarceration has entitled the petitioner to be released on bail and therefore, it is urged by him that the petition deserves to be allowed.

3. *Per contra*, it is argued by learned Assistant Advocate General, Punjab has argued that the previous petition as filed by the petitioner was dismissed by this Court taking into consideration that a huge quantity of the contraband i.e. 03 kgs. of heroin had been recovered in this case, which fell under the commercial quantity. The trial is going on at a proper pace. It is submitted that no new change in the circumstances has been pointed out. The

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mere extended period of incarceration alone is not sufficient to grant benefit of bail to the petitioner. Allegations against the petitioner are quite serious in nature. Therefore, it is urged that the petition does not deserve to be allowed.

4. I have heard learned counsel for the parties at considerable length and have gone through the record carefully.

5. The previous petition as filed by the petitioner for grant of regular bail had been dismissed vide order dated 19.11.2024. The instant one has been filed within a period of three months of the said order on the ground that the trial is not progressing and the petitioner is in extended period of incarceration. It is well settled proposition of law that when successive bail applications come before the Court, the Court should be very cautious while considering the same. Successive bail applications can be entertained by the Court when some substantial change is established by the accused thereby making him entitled for grant of bail. Reference in this regard can be made to ***State of Maharashtra Vs. Captain Buddhikota Subha Rao, AIR 1989 Supreme Court, 2292***, wherein it was observed so and it was further held that the Court should not pass an order of release of an accused on bail in successive bail application merely establishing some cosmetic change between time gap of two applications. There must be some drastic change during the period between two applications. Reference can also be made to ***Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and another (2004) 7 SCC 528***, wherein it was observed by Hon'ble Supreme Court that where the offence alleged against an accused is grave, bail cannot be granted only on the ground of long incarceration.

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6. After hearing the contentions as raised by learned counsel for the petitioner, I am of the considered opinion that no substantial or drastic change from the date of dismissal of the previous petition as moved by the petitioner has been pointed out or made out from the pleas taken by the petitioner. Merely the extended/prolonged period of incarceration or examination of some material witnesses is not a ground to extend any such benefit. A huge quantity of the contraband, which obviously falls within the ambit of commercial quantity, has been recovered from him. More so, the rigors of Section 37 of the NDPS Act would also be attracted against the petitioner as there is nothing on record to believe that he did not commit the subject offence or in case he is granted concession of bail, he would not indulge in similar offences. Keeping in view the nature and gravity of the offence, in my considered opinion, it is not a fit case to enlarge the petitioner on bail, especially in view of the fact that no drastic or material change in the circumstances has been made out. In view of the discussion as made above, but without meaning to make any comment on the merits of the case, I am of the considered opinion that the petition does not deserve to be allowed. Hence, the same is dismissed.

7. It is made clear that the observations made hereinabove are only for the purpose of deciding the present petition and the same shall not be construed as an expression of opinion on the merits of the case.

08.04.2025

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No