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

CRM-M-16410-2025 (O&M)

Reserved on : 01.08.2025

Pronounced on : 07.08.2025

Rakesh Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Vipin Kumar, Advocate
for the petitioner.

Ms. Sakshi Bakshi, AAG, Punjab.

MANISHA BATRA, J.

1. Prayer in this petition, filed under Section 439 of Cr.P.C., is for grant of regular bail to the petitioner in case bearing FIR No. 76 dated 29.04.2021, registered under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'NDPS Act'*) at Police Station Lalru, District Mohali.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that on 29.04.2021, the petitioner and co-accused Deepak Kumar were apprehended by a police party headed by ASI Ashwani Kumar and recovery of 2400 capsules of PARVIAN SPAS and 9600 capsules of PYEEVION SPAS (both medicines containing Tramadol HCL) was effected from the present petitioner, whereas 103 grams of heroin was recovered from co-accused Deepak Kumar. Since they could not produce any valid license or permit to keep in their possession the recovered drug, both of them were formally arrested at the spot. After completion of necessary investigation and usual formalities, *challan* under Section 173 of Cr.P.C. was presented on

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25.09.2021 in the Court and presently, the petitioner is facing trial for commission of aforementioned offences. Co-accused Deepak Kumar was granted concession of regular bail on 18.06.2021 but he did not appear before the learned trial Court and ultimately, he was declared a proclaimed offender. He is stated to be still absconding.

3. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. Mandatory provisions of the NDPS Act were not complied with properly. No independent witness was joined at the time of effecting alleged recovery. Even otherwise, investigation has been completed long back and *challan* has been presented in Court. However, trial is substantially delayed as despite the fact that *challan* was presented on 25.09.2021 and out of total 14 prosecution witnesses, only 08 prosecution witnesses have been examined so far and there is no likelihood of the trial being completed in near future. The petitioner is not involved in any other case and has clean antecedents. He is in custody since 29.04.2021 i.e. for the last more than 04 years. In view of substantial delay in trial, the petitioner is entitled to get benefit of bail. No useful purpose would be served by keeping the petitioner in custody anymore. It is, therefore, urged that the petition deserves to be allowed.

4. Status report has been filed by the respondent-State. Learned Assistant Advocate General, Punjab has argued that keeping in view the gravity of the allegations levelled against the petitioner, he is not entitled to get benefit of bail. Hence, it is urged that the petition is liable to be dismissed.

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

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6. As per the allegations, the petitioner was found to be in possession of aforesaid intoxicating drugs on 29.04.2021, whereas co-accused Deepak Kumar was apprehended with 103 grams of heroin. The petitioner is in custody since the date of registration of the FIR. However, co-accused Deepak Kumar had been granted concession of regular bail by the learned trial Court but he is absconding and has been declared a proclaimed offender. On going through the record, it is apparent that the trial is substantially delayed as only 08 prosecution witnesses have been examined so far out of total 14 witnesses, despite the fact that challan was presented way back 25.09.2021. The petitioner has been in long incarceration of more than 04 years. The trial is obviously delayed and there is no likelihood of the same to conclude in near future. Hon'ble Supreme Court in ***Rabi Prakash vs. State of Odisha : 2023 Live Law (SC) 533*** has held that 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. Similar view has been taken by Hon'ble Supreme Court in ***Ankur Chaudhary vs. State of Madhya Pradesh : 2024 (4) RCR (Criminal) 172***. Reliance can also be placed upon ***Mohd. Muslim @ Hussain vs. State (NCT of Delhi) : 2023 AIR(SC) 1648*** ***2023 AIR(SC) 1648***, wherein Hon'ble Supreme Court, while granting concession of regular bail to an accused, from whom commercial quantity of the contraband was allegedly recovered, has held that grant of bail on the ground of undue delay in trial cannot be said to be fettered by Section 37 of the NDPS Act. Reference can also be made to the authority cited as ***Satender Kumar Antil vs. Central Bureau of Investigation and another, 2022(10) SCC 51***, wherein similar observations were made by

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the Hon’ble Supreme Court. Reliance can also be placed upon the authority cited as *Bhupender Singh vs. Narcotic Control Bureau : (2022) 2 RCR (Criminal) 706*, wherein a Division Bench of this Court, after considering issue with respect to achieving balance between right to speedy trial guaranteed under Article 21 of the Constitution of India and the rigors enumerated under Section 37 of the NDPS Act, has held that convict/accused is not precluded from claiming bail invoking parameters of Article 21 of the Constitution of India *de-hors* the stringent provisions of Section 37 of the NDPS Act. In the present case, apparently and evidently, the trial is substantially delayed. Therefore, keeping in view the aforementioned facts and circumstances and also the ratio of law as laid down in the aforecited authorities, this Court is of the considered opinion that no useful purpose would be served by keeping the petitioner in custody anymore. Accordingly, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing personal/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned. However, it will be open for the prosecution to apply for cancellation of bail in case the petitioner is found involved in any other subsequent case.

8. It is made clear that any observation made herein above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

07.08.2025

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No