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

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CRM-M-23383 of 2024

DATE OF DECISION :- 24.02.2025

Dheeresh Kumar**...Petitioner****Versus****State of Haryana****...Respondent****CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU****Present:-** Mr. L.S. Sekhon, Advocate for the petitioner.

Mr. Neeraj Sheoran, DAG, Haryana.

MAHABIR SINGH SINDHU, J.

Present second petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of bail pending trial to the petitioner in FIR No. 119 dated 11.09.2021, under Sections 22-C and 27-A of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS' Act), registered at Police Station Jakhal, District Fatehabad.

2. Allegations are that police party on the basis of secret information apprehended co-accused Gaganjit Singh while riding motorcycle bearing registration No. PB-44B-6261 and petitioner was on the pillion. A white coloured plastic bag containing 500 tablets of Tramadol and 28 bottles of cough syrup containing codeine was kept in between them on the motorcycle in question and the same was sealed and seized by the police party.

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3. Contends that petitioner was granted interim bail by this Court on 19.10.2024 and he is regularly appearing before learned Special Court. There is no apprehension that petitioner is likely to influence the prosecution witnesses or hamper the trial, in any manner. Also contends that co-accused namely, Gaganjeet Singh who was driving the motorcycle with similar allegations has already been granted bail on 20.02.2023 (P-3) by a Coordinate Bench of this Court in CRM-M-17127 of 2022. Still further contends that there is no other criminal case pending against the petitioner. Lastly contended that no prosecution witness has been examined till date; thus 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 opposed the prayer on the premise that commercial quantity of contraband was recovered from the petitioner and his co-accused as such, bar under Section 37 of NDPS Act, would apply.

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

6. This Court granted interim bail to the petitioner on 19.10.2024 and the order reads as under:-

“Contends, inter alia, that petitioner is in custody since 11.09.2021; charges were considered on 19.10.2023, but no prosecution witness has been examined till date.

Learned State counsel seeks time to verify the above factual position.

Posted for 17.12.2024.

In the meanwhile, petitioner be released on interim bail in the present case, till the next date of hearing, on furnishing



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adequate bail and surety bonds subject to the satisfaction of learned Special Court/CJM/Duty Magistrate concerned.”

7. It is not in dispute that petitioner remained in custody from 11.09.2021 to 19.10.2024; report under Section 173 Cr.P.C was submitted on 03.03.2022 and charges were framed on 19.10.2023. Learned State counsel is also not able to controvert that after granting interim bail vide order dated 19.10.2024, petitioner is regularly appearing before learned Special Court and never misused the concession in any manner. Apart that, out of total 19 prosecution witnesses, none has been examined till date; hence, trial is likely to take sufficient long time.

8. Although recovery of contraband kept on the motorcycle driven by co-accused Gaganjit Singh is alleged to be commercial in nature, but that would be a debatable question during trial as to whether petitioner, who was a pillion rider, was in any way connected with the alleged contraband. Be that as it may, at this stage, it is very difficult to comprehend that petitioner was in conscious possession of the alleged contraband.

9. 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) Prima facie, the alleged recovery was from motorcycle driven by co-accused and petitioner was the pillion rider; hence, being a debatable question, shall be decided during trial and in such a scenario, it is very difficult to say that petitioner is guilty of the alleged offence.

(ii) After registration of the FIR in question, petitioner has not been involved in any case under the NDPS Act.

10. Needless to say that above “Twin Test” satisfaction has been recorded only for the purpose of bail application and same be not treated as



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an opinion on pending trial before learned Special Court.

11. It is also not in dispute that there is no other criminal case pending against the petitioner and out of total 19 prosecution witnesses, none has been examined till date; thus conclusion of trial is likely to take sufficient long time.

12. Consequently, present petition is allowed. Interim order dated 19.10.2024 is made absolute. Petitioner shall be admitted to bail on furnishing bail/surety bonds to the satisfaction of learned Special Court/Chief Judicial Magistrate/Duty Magistrate concerned.

13. Petitioner shall appear on each and every date of hearing and to fully co-operate with learned Special Court without seeking any unnecessary adjournment(s).

14. The above observations may not be construed as an expression of opinion on the merits of the case.

15. It is clarified that in case of recurrence or any misuse of concession of bail on the part of the petitioner, State of Haryana would be at liberty to move an appropriate application for recalling of this order.

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

(MAHABIR SINGH SINDHU)
JUDGE

24.02.2025
P.Singhl

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No