

2025:PHHC:008664



231.

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

CRM-M-36104-2024

Date of decision: 21.01.2025

Harwinder Singh @ Happy

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Ajay Pal Singh Rehan, Advocate, for the petitioner.

Mr. Amit Rana, Senior DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

The instant petition has been filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in case FIR No.224, dated 30.09.2023, under Section 21 of NDPS Act, 1985 (Section 22 of NDPS Act added subsequently), registered at Police Station Mahilpur District Hoshiarpur.

Learned counsel for the petitioner submits that the petitioner was arrested on 30.09.2023 on suspicion and recovery of 270 grams of tramadol allegedly effected from him. Learned counsel has submitted that challan was presented on 26.03.2024, however, the charges were framed only on 05.11.2024 and that too, after repeated adjournments given by the trial Court as the petitioner was not produced by the jail authorities in person. While drawing attention of this Court to the zimni orders, which have been placed on record today, it has been further submitted by the

learned counsel that a perusal of the zimni orders reveals that despite the Superintendent Jail being directed to tender an explanation as to the reason behind the non-production of the petitioner before the trial Court, he had not complied with the said directions continuously for three dates. It has also been submitted that it stands reflected in the zimni orders that even after the charges had been framed, the prosecution evidence could not commence on account of the PWs not being present before the trial Court concerned. Learned counsel has submitted that in the aforementioned facts and circumstances, more so when the petitioner has no previous criminal antecedents, much less ever being booked in a case under the NDPS Act, his further incarceration in the present case virtually amounts to his constitutional right to a speedy trial being compromised.

Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite, has not disputed the custody period of the petitioner nor has he been able to dispute the contents of the zimni orders, which have been placed on record by the learned counsel for the petitioner today. However, it has been asserted by the learned State counsel that the recovery effected from the petitioner i.e. 270 grams of tramadol has been classified as “commercial quantity” under the Act. It has been further submitted that the next date of hearing before the trial Court is 20.02.2025 when in all likelihood some of the prosecution witnesses out of 12 cited are likely to be examined.

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

The petitioner has been in custody since 30.09.2023; he is not stated to be involved in any other criminal case. The trial has been delayed for reasons not attributable to the petitioner.

In *Rabi Prakash Versus The State of Odisha, 2023 Livelaw (SC) 533* and *Dheeraj Kumar Shukla Versus State of Uttar Pradesh (SLP(Crl.) No.6690/2022)*, decided on 25.01.2023, the Hon'ble Supreme Court, on account of inordinate delay in the conclusion of trial, had done away with the bar created under Section 37 of the NDPS Act and enlarged the accused therein on bail.

In the facts and circumstances as enumerated hereinabove, this Court deems it appropriate to allow the instant petition by dispensing with the conditions of Section 37 of the NDPS Act.

Accordingly, the instant petition is allowed and the petitioner be admitted to bail on his furnishing bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

Needless to add, in case the petitioner misuses the concession of bail granted to him, the State would be at liberty to seek cancellation of the same.

(MANJARI NEHRU KAUL)
JUDGE

January 21, 2025
sanjeev

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No