



CRM-M-47475-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(202)

CRM-M-47475-2024 (O&M)

Date of Decision : 27.01.2025

Sukhdev Singh @ Sukha

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Karanbir Singh, Advocate
for the petitioner.

Mr. Sahil R. Bakshi, AAG, Punjab.

KULDEEP TIWARI, J.(Oral)

1. This is the second petition, filed under Section 483 of BNSS, 2023, wherein, the petitioner prays for grant of regular bail in case FIR No.59 dated 25.03.2023 (Annexure P-1), under Section 15 of the NDPS Act, 1985 (offence under Sections 25 and 31 of the NDPS Act, 1985 added later on), registered at Police Station Division No.8, Jalandhar District, Jalandhar.

2. The earlier bail application, preferred by the petitioner was dismissed by this Court, by drawing an order dated 20.03.2024 (Annexure P-6), with liberty to re-access this Court, in case inordinate delay occurs in conclusion of the trial.

3. On asking for the relief (supra), learned counsel for the petitioner submits, that since the dismissal of the earlier bail application, there is no progress in the trial, as only four prosecution witnesses have been examined, out of total 12 witnesses, as cited by the prosecution, as on date.

He further submits that the petitioner has undergone incarceration of more



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which are pending against the present petitioner, in which he is facing a trial, out of which, one case is under the NDPS Act, in which, the next date before the learned trial Court concerned is 11.03.2025.

4. In the instant case, the petitioner was arrested on 25.03.2023, with 130 kg. of poppy husk, without any licence or permit, which is above the prescribed quantity, under the schedule, and undisputedly falls under the ambit of commercial quantity, as per the schedule attached with the NDPS Act. The above said recovery of the contraband was made from a Truck, being driven by Sukhwinder Singh, whereas, the present petitioner was one of the person, who was present in the Truck, at the time of seizure of the above contraband. The instant FIR was registered on a statement made by one, ASI Faqir Singh. The relevant extract of the FIR, reads as under :-

“I, ASI in presence of co-employees below mentioned searched Truck No. PB08-EZ-1433 TATA 407 which was under possession of above mentioned Sukhwinder Singh @Vicky and Sukhdev Singh @ Sukha and 02 plastic bags were recovered from inside driver cabin of truck, which were checked by opening their mouth and dode (poppy capsules) were recovered from both plastic bags, which were weighed turn by turn and weight of both bags is 20/20 Kg total 40 Kg. Then I, ASI searched the body of truck at back and total 05 plastic bags were recovered from the body of truck. I, ASI opened and checked these recovered plastic bags with help of co-employees and dode (poppy capsules) were recovered from all plastic bags, which were weighed turn by turn and weight of 04 bags is 20/20 Kg and weight of 5th bag is 10 Kg. Then I, ASI tied the mouth of all above mentioned recovered 07 plastic bags containing total 130 Kg dode (poppy capsules) with small pieces of rope and sealed with my stamp impression FS and prepared sample seal



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separately. After use, I handed over my stamp to ASI Dilbag Singh 1850. Whereupon, I, ASI took 07 recovered plastic bags sealed with stamp impression FS and Truck No. PB08-EZ-1433 in police custody with seizure memo as evidence.”

5. Though the learned counsel for the petitioner had addressed the arguments on merits of the instant case, to the effect, that some of the mandatory provisions of the NDPS Act, has not been complied with. However, this Court, refrains itself from making any observation on such submissions. The entire thrust of the arguments advanced by the learned counsel for the petitioner is that, neither the present petitioner is the driver, nor the owner of the Truck, from which, the alleged contraband has been recovered. The present petitioner was merely sitting besides the driver. Therefore, as to whether, the petitioner can be held liable for conscious possession, would be the moot question, to be adjudicated by the learned trial Court concerned. However, considering the fact that the petitioner has undergone incarceration of more than 01 year and 09 months, and there is no progress in the trial, since the dismissal of the first bail application, therefore, has filed the instant second petition.

6. Learned State counsel, on instructions imparted to him from the quarter concerned, has opposed the grant of concession of regular bail to the petitioner, on the ground, that the recovery effected in the instant case, falls under the ambit of commercial quantity, and therefore, the rigor of Section 37 of the NDPS Act, comes into operation, and both the requisite conditions, as envisaged under Section 37 of the NDPS Act, are not fulfilled by the petitioner, therefore, he does not deserve the relief of regular bail.

7. Status report dated 26.01.2025, by way of affidavit of



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Commissionerate Jalandhar, on behalf of the respondent-State of Punjab, as well as custody certificate dated 25.01.2025, qua the petitioner, furnished by the learned State counsel today in the Court. The same are taken on the record.

8. The petitioner was arrested on 25.03.2023, with 130 kg. poppy husk. The final report/challan in the instant FIR, was filed on dated 13.09.2023, and charges were framed on dated 13.10.2023. It is not in dispute that only four prosecution witnesses have been examined, out of total 12 witnesses, as cited by the prosecution, as on today. So far as, the rigor of Section 37 of the NDPS Act, is concerned, this Court, in a number of judgments has already observed that long incarceration would dilute the rigor of Section 37 of the NDPS Act.

9. This Court finds vigor from the judgment of the Hon'ble Supreme Court in ***“Rabi Prakash Versus The State of Odisha”, Special Leave to Appeal (Criminal) No.4169 of 2023***, wherein, the Court has also discussed the effect of Section 37 of the NDPS Act, in such like cases of long custody. The relevant portion of the aforesaid judgment contained in para No.4 is reproduced as under:-

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. 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



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liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

10. This Court has heard the rival submission of the parties concerned, and is of the view that the instant petition is amenable to be allowed; (i) considering the period of incarceration undergone by the petitioner, (ii) specifically the fact that the petitioner, who is stated to be involved in three other cases, out of which, one case is under the NDPS Act, in which, the next date before the learned trial Court concerned is 11.03.2025; (iii) and considering that only four prosecution witnesses have been examined, out of total 12 witnesses, as cited by the prosecution, as on today, this Court deems it appropriate to enlarge the present petitioner on regular bail. Accordingly, the instant petition is **allowed**.

11. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of Chief Judicial Magistrate/trial Court/Duty Magistrate, concerned.

12. In case, in future, the petitioner is found to be involved, in such like similar offences, the respondent-State is at liberty, to file an appropriate application for cancellation of the bail granted to the petitioner.

13. However, anything observed hereinabove shall have no effect on the merits of the case and is meant for deciding the present petition only.

(KULDEEP TIWARI)
JUDGE

January 27, 2025
Manpreet

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