

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

201

CRM-M-52395-2024

Date of Decision : February 06, 2025

ANKIT KADIAN

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Sandeep Verma, Advocate for the petitioner.
Mr. Sahil R. Bakshi, AAG, Punjab.

KULDEEP TIWARI, J. (Oral)

1. This is the second petition, filed under Section 439 of Cr.P.C., wherein, the petitioner prays for grant of regular bail in case FIR No.174 dated 7.8.2023, under Sections 22 and 25 of the NDPS Act, 1985, and Section 25 of the Arms Act, registered at Police Station Dharamkot, District Moga.
2. The earlier bail application, preferred by the petitioner was dismissed as withdrawn by this Court, by drawing an order dated 22.5.2024 at that stage.
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 13 witnesses, as cited by the prosecution, as on date. He further submits that the petitioner has undergone incarceration of more than 01 year and 05 months, as on today. Though, the petitioner is stated to be involved in one other case, however, that case is under IPC.
4. In the instant case, the petitioner was arrested on 7.8.2023, with 95 loose tablets of peach containing salt Etizolam, 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.

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, as to whether, the petitioner can be held liable for recovery of 95 loose tablets containing salt Etizolam, which 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 05 months, as on today, 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 by the official 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. In deference to the directions issued by this Court, by drawing an order dated 28.10.2024, **short reply dated 5.2.2025, by way of affidavit of Mr. Ramandeep Singh, PPS, Deputy Superintendent of Police,**

Dharamkot, District Moga on behalf of the respondent-State of Punjab, as well as custody certificate dated 5.02.2025, qua the petitioner, furnished by the learned State counsel today in the Court. The same are taken on the record.

8. Upon perusal of the reply (supra) and the custody certificate, it reveals that the petitioner was arrested on 7.8.2023, with 95 loose tablets of peach containing salt Etizolam. The final report/challan in the instant FIR, was filed on dated 8.1.2024, and charges were framed on dated 25.10.2024. It is not in dispute that only 4 prosecution witnesses have been examined, out of total 13 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 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) and considering that only 4 prosecution witnesses have been examined, out of total 16 witnesses, as cited by the prosecution, as on today; (iii) and the conclusion of the trial would take long time; therefore, this Court deems it fit and 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.

February 06, 2025
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No