



CRM-M-51539-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(206)

CRM-M-51539-2024

Date of Decision : 28.01.2025

Rajinder Singh

...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.00187 dated 17.11.2023 (Annexure P-1), under Sections 22(c)/61/85 of the NDPS Act, 1985, registered at Police Station City Sri Muktsar Sahib.

2. The earlier bail application, preferred by the petitioner was dismissed as withdrawn by this Court, by drawing an order dated 30.07.2024 (Annexure P-3), with liberty to file appropriate motion before the learned trial Court concerned.

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 six prosecution witnesses have been examined, out of total 16 witnesses, as cited by the prosecution, as on date. He further submits that the petitioner has undergone incarceration of more than 01 year and 02 months, as on today. Though, the petitioner is stated to

be involved in one other case, however, he is on bail in that case.



4. In the instant case, the petitioner was arrested on 17.11.2023, with 394 grams of Tramadol tablets (1000 tablets of Colobidol 100 SR), 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, in the instant FIR, the recovery of alleged contraband is effected from a polythene bag, which was carried by the co-accused Gurdeep Singh, and 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 02 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 ASI Sukhpal Kumar, 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 24.10.2024, reply dated 27.01.2025, by way of affidavit of Mr. Satnam Singh, PPS, Deputy Superintendent of Police, Sub Division Sri Muktsar Sahib, 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 17.11.2023, with 394 grams of Tramadol tablets (1000 tablets of Colobidol 100 SR). The final report/challan in the instant FIR, was filed on dated 22.04.2024, and charges were framed on dated 06.05.2024. It is not in dispute that only six prosecution witnesses have been examined, out of total 16 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 six 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 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 28, 2025
Manpreet

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