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

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CRM-M-63270-2024 (O&M)

Date of decision: 19.02.2025

Wazir Masih**...Petitioner****Versus****State of Punjab****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Kulwinder Singh, Advocate
for the petitioner.

Ms. Himani Arora, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The instant one is the second petition that has been filed by the petitioner for grant of regular bail to the petitioner in FIR No. 130 dated 29.07.2023, registered under Sections 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'NDPS Act'*) at Police Station City Malout, District Sri Muktsar Sahib. The first petition, bearing number **CRM-M-20428-2024**, was dismissed by this Court on 05.11.2024. The operative part of the order dated 05.11.2024 reads as under :

“6. As per the allegations, the petitioner was apprehended by the police party on 29.07.2023 along with aforesaid co-accused and recovery of 2100 tablets of Clovidol-100 SR was effected from them, which falls under the commercial quantity. Hence, the rigors of Section 37 of the NDPS Act would certainly be attracted against the petitioner. As regards the arguments advanced by learned counsel for the petitioner with regard to recovery memo not bearing the

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signatures of the petitioner and having been forged by the police officials and also the non-compliance of the statutory provisions of the Act during investigation by the police party, the same have direct bearing on the merits of the case, which cannot be looked into at this stage while deciding a bail petition filed under Section 439 of Cr.P.C. More so, the plea of the petitioner taken with regard to recovery memo has been categorically denied by the respondent-State. There is nothing on record to show that there would be any undue delay in conclusion of trial. The apprehension expressed by learned State counsel that the petitioner, if extended benefit of bail, may abscond or indulge in similar offences can also not be stated to be unfounded. Keeping in view the discussion as made above, the quantity of recovered contraband, the quantum of sentence which the conviction may entail and the attendant facts and circumstances of the case, I am of the considered opinion that the petitioner does not deserve to be granted benefit of regular bail, at this stage. Hence, the petition is dismissed.”

2. In addition to the arguments raised at the time of disposal of the first petition, learned counsel for the petitioner has only argued that the extended period of incarceration has entitled the petitioner to be released on bail and therefore, it is urged by him that the petition deserves to be allowed.
3. Status report has been filed by the respondent-State. It is submitted therein and learned Assistant Advocate General, Punjab has argued that the previous petition as filed by the petitioner was dismissed by passing a detailed order by this Court by taking into consideration the contentions raised by both sides. It is submitted that no new change in the circumstances has been pointed out. The mere extended period of incarceration alone is not

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sufficient to grant benefit of bail to the petitioner. Allegations against the petitioner are quite serious in nature. Therefore, it is urged that the petition does not deserve to be allowed.

4. I have heard learned counsel for the parties at considerable length and have gone through the record carefully.

5. The previous petition as filed by the petitioner for grant of regular bail had been dismissed vide order dated 05.11.2024. The instant one has been filed within a period of four months of the said order. It is well settled proposition of law that when successive bail applications come before the Court, the Court should be very cautious while considering the same. Successive bail applications can be entertained by the Court when some substantial change is established by the accused thereby making him entitled for grant of bail. Reference in this regard can be made to ***State of Maharashtra Vs. Captain Buddhikota Subha Rao, AIR 1989 Supreme Court, 2292***, wherein it was observed so and it was further held that the Court should not pass an order of release of an accused on bail in successive bail application merely establishing some cosmetic change between time gap of two applications. There must be some drastic change during the period between two applications. Reference can also be made to ***Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and another (2004) 7 SCC 528***, wherein it was observed by Hon'ble Supreme Court that where the offence alleged against an accused is grave, bail cannot be granted only on the ground of long incarceration.

6. After hearing the contentions as raised by learned counsel for the petitioner, I am of the considered opinion that no substantial or drastic change

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from the date of dismissal of the previous petition as moved by the petitioner has been pointed out or made out from the pleas taken by the petitioner. Merely the extended/prolonged period of incarceration or examination of some material witnesses is not a ground to extend any such benefit. There are serious and specific allegations against the petitioner. The trial is also going on at a good pace and there is nothing to show that there would be any undue delay in conclusion of the same. Even otherwise, in cases under the NDPS Act involving commercial quantity, negation of bail is the rule and its grant is an exception. Keeping in view the nature and gravity of the offence, in my considered opinion, it is not a fit case to enlarge the petitioner on bail, especially in view of the fact that no drastic or material change in the circumstances has been made out. In view of the discussion as made above, I am of the considered opinion that the petition does not deserve to be allowed. Hence, the same is dismissed.

7. It is made clear that the observations made hereinabove are only for the purpose of deciding the present petition and the same shall not be construed as an expression of opinion on the merits of the case.

19.02.2025

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No