



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

CRM-M-39983-2024

Date of Decision : 16.01.2025

AJAYPAL SINGH ALIAS AJAY

-PETITIONER

V/S

STATE OF PUNJAB

-RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Ankush Rampal, Advocate
for the petitioner.

Mr. Sahil R. Bakshi, AAG, Punjab.

KULDEEP TIWARI, J. (ORAL)

1. Through the instant second petition cast under Section 439 of the Cr.P.C., the petitioner pray for him being granted the concession of regular bail, in case FIR No.45, dated 25.02.2023, under Sections 22(c) of the the Narcotic Drugs and Psychotropic Substance Act, 1985, registered at Police Station Lambi, District Sri Muktsar Sahib (Annexure P-1).

2. Learned counsel for the petitioner submits that the instant second petition has been filed on the ground that there is an inordinate delay in conclusion of the trial, as the earlier petition bearing No.CRM-M-7220-2024, was dismissed as withdrawn vide order dated 04.04.2024, with a liberty to re-access this Court in case of inordinate delay in the conclusion of the trial.

3. Succinctly stated, the recovery of 30 tablets of Etezola containing Etizolam and 30 tablets of Clovis-MD containing salt Clonazepam, from the possession of the petitioner, which admittedly falls within the ambit of the commercial quantity, as per the schedule attached to the NDPS Act.

4. The learned counsel for the petitioner opt not to address any arguments on merits of the case, rather confines the sphere of his arguments only to the period of incarceration suffered by the petitioner, besides the stage of trial. He further submits that, since the trial is progressing in a snail pace, inasmuch as out of the total 17 prosecution witnessess only 09 have been examined, therefore, no fruitful purpose would be served by keeping the petitioner behind the bars, who has already suffered incarceration of approx. 2 years, as on today.

5. *Per contra*, the learned State counsel vociferously opposes the grant of regular bail to the petitioner, on the ground that, since the recovered contraband falls within the category of “commercial quantity”, therefore, in view of the statutory bar engrafted in Section 37 of the N.D.P.S. Act, the petitioner does not deserve the concession of bail.

6. He, on instructions imparted to him by the official concerned, verifies that out of the total 17 prosecution witnesses, 09 have been examined has been examined by the prosecution. The petitioner is stated to be involved in two more criminal cases under the NDPS Act, however, he is on bail in one case.

7. He has also filed a status report, dated 14.10.2024, by way of an affidavit of Sh.Jaspal Singh, DSP, Sub-Division Lambi, District Sri

Muktsar Sahib, today in Court, which is taken on record.

8. He has also filed a custody certificate *qua* the petitioner today in court, which is taken on record. A perusal thereof reveals that the petitioner has suffered incarceration of 01 year 10 months and 18 days, as on today.

9. This Court has heard the submissions made by the learned counsels for the parties concerned, and perused the entire record.

10. Although, it is not under dispute that the recovered contraband falls within the ambit of “commercial quantity”, thus attracting the rigor of Section 37 of the N.D.P.S. Act, however, it is also not under dispute that sufficient period of incarceration dilutes the stringent conditions of Section 37 of the N.D.P.S. Act. Gainful reference in this regard can be made to “**Rabi Prakash Versus The State of Odisha**”, **Special Leave to Appeal (Criminal) No.4169 of 2023**, wherein, the Hon’ble Supreme Court has 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.”

11. Therefore, be that as it may, considering the fact that: (i) as per the custody certificate, the petitioner has suffered incarceration of 01 year 10

months and 18 days, as on today; (ii) there is no likelihood of the trial concluding anytime soon inasmuch as out of the total 17 prosecution witnesses, only 09 have been examined till date; this Court deems it appropriate to grant the concession of regular bail to the petitioner. Therefore, without commenting upon the merits and circumstances of the present case, the present petition is **allowed**. The petitioner is ordered to be released on bail on furnishing of his bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

12. It is clarified that if in future, the petitioner is found indulging in commission of similar offences, as are involved herein, the respondent-State shall be at liberty to make an appropriate application seeking cancellation of regular bail, as granted by this Court.

13. However, anything observed here-in-above shall have no effect on the merits of the trial and is meant for deciding the present petition only.

14. All pending application(s), if any, also stand **disposed** of accordingly.

January 16, 2025
dharamvir

(KULDEEP TIWARI)
JUDGE

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