

**(2023) 07 SHI CK 0017**

**In the High Court Of Himachal Pradesh**

**Case No :** Criminal Miscellaneous Petition (Main) No. 2303 Of 2023

Sanju Sharma

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

**Date of Decision :** 06-07-2023

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8C, 19, 22, 24, 27A, 37, 37(1)(b)

**Citation :** (2023) 07 SHI CK 0017

**Hon'ble Judges :** Sushil Kukreja, J

**Bench :** Single Bench

**Advocate :** N.K. Thakur, Divya Raj Singh, Jitender Sharma

**Final Decision :** Dismissed

## Judgement

Sushil Kukreja, J

1. By way of instant petition, filed under Section 439 of the Code of Criminal Procedure the petitioner is seeking bail in case FIR No. 143/2020, dated 07.09.2020, under Sections 8C & 22 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as "the Act") registered at Police Station Amb, District Una, H.P.

2. The perusal of the status report filed by the respondent/State reveals that on 07.08.2020, the police party was on patrolling duty and at about 02:05 P.M. when they were present at place Athwan Chowk, they saw a person, who was carrying a bag, coming from the side of Luminous Factory towards Athwan. On seeing the police party, the person got perplexed and tried to run away. On suspicion, the said person was nabbed by the police party. The police party associated Rajesh Kumar and Roop Lal as witnesses in the proceedings, in whose presence the person disclosed his name as Sanju Sharma (petitioner herein). Thereafter, the bag of the accused-petitioner was searched and during search, 81 strips of SPAS-TRANCAN PLUS capsules, each strip containing 24 capsules and

total 1944 capsules were found from his possession. The accused-petitioner had failed to produce any license or permit qua possession of the aforesaid capsules. After completion of necessary codal formalities, FIR detailed hereinabove came to be registered against the accused and he was arrested.

3. The bail application has been filed by the petitioner on the ground that he is innocent and has been falsely implicated in the present case. The learned counsel appearing on behalf of the petitioner has contended that the petitioner is in judicial custody for the last more than two years and there is no likelihood of conclusion of trial in near future as till date, out of total 23 prosecution witnesses, only 5 witnesses have been examined, therefore, the delay in conclusion of trial infringes upon the right of speedy trial of the petitioner, as such, he is required to be released on bail.

4. Per contra, the learned Additional Advocate General opposed the bail application on the ground that keeping in view the gravity of the offence alleged to have been committed by the petitioner and quantity of the recovered contraband, i.e. commercial quantity, he is not entitled to be enlarged on bail.

5. I have heard the learned counsel for the petitioner as well as learned Additional Advocate General and have also gone through the record of the case. From the perusal of the record, I am of the firm opinion that the petitioner has not made out a case for grant of bail, as the quantity of the capsules recovered in the present case is 970.056 gms, which is commercial quantity. As per report of the FSL, the capsules contained Tramadol Hydrochloride, which is a psychotropic substance. Since the quantity of the recovered capsules falls within the definition of commercial quantity, therefore, the grant of the bail in this case is governed by the provision of Section 37 of the NDPS Act, which reads as under:-

"37. Offences to be cognizable and non-bailable.- (1) Notwithstanding anything contained in the code of Criminal Procedure, 1973 (2 of 1974)

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail."

6. The Hon'ble Apex Court in the matter of The State (NCT of Delhi) Narcotics Control Bureau Vs. Lokesh Chadha, (2021) 5 Supreme Court Cases 724, has held that no person accused for offences involving a commercial quantity shall be released on bail, where the public prosecutor opposes the application, unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. The relevant portion of the said judgment is reproduced hereunder:-

"9. ....Section 37 of the NDPS Act stipulates that no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27-A and also for offences involving a commercial quantity shall be released on bail, where the public prosecutor opposes the application, unless the Court is satisfied "that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.....".

7. Thus, in view of the aforesaid decision of Hon'ble Apex Court, unless the conditions as laid down under Section 37 of the NDPS Act are satisfied, the bail cannot be granted to an accused, who has been found involved in the commercial quantity of the contraband under the provisions of the NDPS Act. Moreover, the limitations on granting of bail specified in clause (b) of sub-section (1) of Section 37 of the NDPS Act are in addition to the limitations under the Code of Criminal Procedure.

8. Earlier also the bail application of the petitioner, being Cr. MP(M) No. 114 of 2021, was dismissed by a coordinate Bench of this Court on 04.02.2021 and the petitioner has failed to produce on record any changed circumstances to grant him bail, except that he is behind the bars since 07.09.2020 and there are no chances of conclusion of trial in near future. The learned counsel for the petitioner contended that the prosecution has cited 23 witnesses and till date only 5 witnesses have been examined, therefore, delay in conclusion of trial infringes upon the right of speedy trial of the petitioner, as such, he deserves to be released on bail on the ground of delay in trial.

9. It is not in dispute that an under-trial prisoner cannot be detained in custody for an indefinite period and the petitioner who is an under-trial prisoner has a right to speedy trial under the Constitution of India. However, in the instant case, it cannot be said that the petitioner has suffered incarceration for a prolonged duration, as he is behind the bars only since 07.09.2020. The trial in the case has commenced and out of 23 witnesses cited by the prosecution, 05 witnesses have already been examined. Moreover, the quantity of capsules recovered from the conscious possession of the petitioner is a huge quantity of 970.056 gms, which is much more than commercial quantity and there is no material available on record from where it can be gathered that the petitioner is not guilty of such offence and he would not repeat any such offence while on bail. Therefore, merely because of the fact that he is in custody for the last more than two years is not a ground to override the mandatory provisions of Section 37 of the NDPS Act. The learned trial Court can always be directed to decide the case

expeditiously in a time bound manner.

10. Hence, for the reasons mentioned above, the bail application filed by the petitioner is dismissed. However, the learned trial Court is directed to decide the trial pending before it as expeditiously as possible preferably before 31st March, 2024.

11. Be it stated that any expression of opinion given in this order does not mean an expression of opinion on the merits of the case and the trial Court will not be influenced by any observations made therein.