

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-32521-2019
Date of Decision: 09.11.2021

Rana Singh

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Satwant Mehta, Advocate, for the petitioner.

Mr. Randhir Singh Thind, DAG, Punjab.

Through Video Conferencing

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.49 dated 16.07.2018, under Section 22 of NDPS Act, 1985, registered at Police Station Khem Karan, District Tarn Taran.

The learned counsel for the petitioner has submitted that the petitioner is in custody for 2 years, 7 months and 25 days excluding the period of interim bail granted to him. She submitted that the petitioner has been suffering from pseudocyst of pancreas from a long time and a surgery is also advised, however, the surgery was not conducted as he was earlier advised some medicines but ultimately surgery has been advised. She has further submitted that the petitioner was earlier on interim bail due to medical reasons and after the expiry of interim bail, he has already

surrendered before the learned trial Court and is in custody now. She further submitted that there is an alleged recovery of 800 tablets of tramadol but these tablets were loose tablets without any batch number etc. and only a sample of the same was sent to the Forensic Science Laboratory and has referred to Annexure P-4, which is the FSL report to show that only 10 loose unlabelled orange coloured tablets were sent for FSL and has also relied a Division Bench judgment of this Court in '*State of Punjab Versus Dharam Singh*' [2010(3) RCR(Criminal), 94] to support her contentions. She has submitted that not only that the custody is of about 2 years and 8 months but it is a fit case where departure can be from the bar contained under Section 37 of the NDPS Act in view of the fact that only 10 loose tablets were sent to Forensic Science Laboratory and, therefore, has prayed for the grant of regular bail.

On the other hand, Mr. Randhir Singh Thind, learned Deputy Advocate General, Punjab has submitted that so far as the custody period of the petitioner is concerned, the same is correct and his total custody comes out to be 2 years, 7 months and 25 days excluding the interim bail period and it is also correct that after the expiry of the interim bail, the petitioner had surrendered before the trial Court. He has however submitted that the petitioner is involved in one other case, which is although not under the NDPS Act but is involved in a case under Section 308 IPC. He has opposed the grant of bail only on the ground of Section 37 of the NDPS Act.

I have heard the learned counsel for the parties.

The custody period of the petitioner is not in dispute. It is further not in dispute that after the expiry of the interim bail, the petitioner has surrendered before the trial Court. A perusal of the FSL report would

show that only 10 loose tablets which are unlabelled were sent to the Forensic Science laboratory for examination and, therefore, at this stage, there is nothing to show as to whether the confiscated quantity was a commercial quantity or not and as to what was the salt with regard to the remaining tablets which were not sent for Forensic examination. The petitioner has surrendered after the expiry of the interim bail and it is not the case of the State that in case the petitioner is granted bail, then he may repeat the offence or may flee from justice. Therefore, this Court is of the *prima facie* view that there are reasons to believe on the basis of the aforesaid factual position that the petitioner is not guilty of the offence at this stage. The second ingredient for making a departure from Section 37 of the NDPS Act is also fulfilled in view of the submissions made by the learned State counsel in which he has not put forth any ground that the petitioner may repeat the offence in case bail is granted. Therefore, this Court is satisfied that considering the facts and circumstances of this case a departure can be made from Section 37 of the NDPS Act.

Consequently, the petitioner shall be entitled to grant of bail. Therefore, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

09.11.2021

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)

JUDGE

: Yes/No
: Yes/No