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

CRM-M-5659-2022

Date of Decision: 05.07.2022

Jagtar Singh alias Jagga

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. J.S. Dadwal, Advocate,
for the petitioner.

Mr. Davinder Bir Singh, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.0051 dated 17.03.2021, under Section 379-B & 411 of the IPC, Sections 21, 29, 61, 85 of the N.D.P.S. Act, 1985 and Sections 25, 27, 54 & 59 of Arms Act, 1959 registered at Police Station Division No.6, Ludhiana.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 17.03.2021 and as per the prosecution there was a recovery of 60 grams of *Diphenoxylate Hydrochloride* from the petitioner. He further submitted that although the commercial quantity defined under the N.D.P.S. Act is 50 grams but the present alleged recovery was marginally higher than the aforesaid 50 grams. He also submitted that there has been a violation of Section 50 of the N.D.P.S. Act in the present

case and therefore, he may be considered for the grant of regular bail. He further submitted that no independent witness was joined in the present case.

On the other hand, Mr. Davinder Bir Singh, learned Deputy Advocate General, Punjab, has submitted that it is correct that the petitioner is in custody since 17.03.2021 and the case is now fixed for prosecution evidence before the learned trial Court. He further submitted that the present bail petition of the petitioner is barred by Section 37 of the N.D.P.S. Act since the confiscated quantity from the petitioner falls under the category of commercial quantity under the N.D.P.S. Act. He also submitted that the petitioner has no ground to make a departure from the aforesaid bar. He further submitted that so far as the argument raised by the learned counsel for the petitioner that there was a violation of Section 50 under the N.D.P.S. Act is concerned, he referred to the vernacular of the challan whereby an offer was made to the petitioner for getting searched from either Magistrate or a Gazetted Officer and the petitioner had opted for a Gazetted Officer. Thereafter, the Assistant Commissioner of Police was called and there had been a total compliance of Section 50 of the N.D.P.S. Act. He further submitted that so far as the non-joining of independent witnesses are concerned, the same could not be done because nobody came forward for assisting the police in this regard. He has further referred to the custody certificate of the petitioner, which has been filed by the State and submitted that the petitioner is involved in six more cases. He also submitted that although the aforesaid cases against the petitioner do not pertain to the N.D.P.S. Act but they include Section 379-B of the IPC as well as the Arms

Act apart from various other sections including the theft. He further submitted that in case the petitioner is released on bail then there is a likelihood that he may repeat the offence particularly in view of the fact that he is involved in as many as six more cases.

I have heard the learned counsel for the parties.

The petitioner is in custody since 17.03.2021 and the alleged recovery from the petitioner was 60 grams of *Diphenoxylate Hydrochloride* which falls in the category of commercial quantity. Learned counsel for the petitioner has not been able to make out any ground for making a departure from the bar contained under Section 37 of the N.D.P.S. Act. Otherwise also, no ground is made out to grant regular bail to the petitioner. Consequently, the present petition is hereby dismissed.

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

05.07.2022

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes |
| 2. Whether reportable: | Yes/No |