

Sr. No. 221
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M No.6848 of 2022
Date of Decision: 11.07.2022

Sudhir Mandal

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Kanwaljeet Singh Brar, 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 the grant of regular bail to the petitioner in FIR No.15 dated 18.01.2021, under Sections 22, 61 and 85 of the NDPS Act, 1985, registered at Police Station City Faridkot, District Faridkot.

It has been submitted by learned counsel for the petitioner that the petitioner is in custody since 20.12.2021, which is more than 07 months. He has submitted that the charges in the present case were framed on 20.12.2021 and thereafter, no prosecution witness has been examined. He also submitted that the petitioner was earlier granted interim bail by the learned trial Court in view of the fact that the FSL report was awaited and when the FSL report was received, the petitioner had surrendered well in time. He has submitted that it is a case, where the petitioner was falsely implicated and in fact, the case was planted upon the petitioner. He further

submitted that as per the allegations, the petitioner was apprehended along with 800 tablets of Tramadol weighing approximately 275 gms, which he was allegedly carrying in a transparent plastic bag. He submitted that although the commercial quantity of Tramadol Hydrochloride under the NDPS Act is 250 gms and in the present case weight is of 275 gms, which is marginally high but it is a case, where the bar contained under section 37 of the NDPS Act would not apply. He further submitted that he has submitted photocopies of zimni orders, which have been passed by the trial Court after the framing of the charges. He referred to these orders starting from 17.02.2022, wherein the PWs were summoned from time to time. While referring to one of the orders dated 10.03.2022, he submitted that it was observed by the trial Court that PW SI Gurmail Kaur had failed to appear before the Court despite service and she was again summoned along with the remaining PWs. On 31.03.2022, it was again observed by the trial Court that PW SI Gurmail Kaur failed to appear before the Court despite service. In this order she was again summoned for 26.04.2022 along with other remaining PWs. Thereafter, when the matter came up for hearing before the trial Court on 02.06.2022, it was observed that no PW is present and one PW ASI Gurlal Singh has failed to appear despite service and therefore, the aforesaid ASI Gurlal Singh was summoned throughailable warrants in the sum of Rs.15,000/- with one surety in the like amount for 23.06.2022 and remaining PWs were also summoned for the said date. Thereafter, on 23.06.2022 again no PW was present. He further submitted that the aforesaid ASI Gurlal Singh is the Investigating Officer in the present case. He submitted that the conduct of the prosecution witnesses in deliberately

not appearing before the Court for deposing clearly shows that the petitioner has been falsely implicated in the present case. He submitted that the criminal law machinery was set into motion by the police officials themselves and it is a case of NDPS, where the witnesses are official witnesses including the Investigating Officer and the police party and the Court is repeatedly summoning them for deposing and for securing their presence bailable warrants have also been issued but still they are evading and not coming forward to depose before the Court, which would mean that the petitioner has been falsely implicated. The petitioner has faced incarceration for more than 8 months including the period of interim bail. He has, therefore, submitted that the provisions of Section 37 of the NDPS Act would not apply in the present case.

On the other hand, learned State counsel has submitted that it is correct that the petitioner is in custody for about more than 07 months and number of dates have been passed before the trial Court but no PW has been examined. He submitted that only objection which the State has is that the bail application is hit by the bar contained under Section 37 of the NDPS Act. He further submitted that the petitioner is also involved in one more case under Section 22 of the NDPS Act.

I have heard learned counsels for the parties.

The petitioner is in custody for more than 07 months and the learned counsel for the petitioner has produced photocopies of the various zimini orders after the framing of charges, which would show that for a number of times the PWs including the Investing Officer were summoned and even bailable warrants have been issued for securing their presence. On

a specific query being raised from the learned State counsel as to why and under what circumstances these police officials at whose instance the prosecution was lodged are not coming forward for deposing before the Court despite repeated summons andailable warrants issued by the Trial Court, learned State counsel was not able to answer any of the points raised by this Court. It appears that there is no justification coming forward from any corner as to why the prosecution witnesses which comprises mainly the police officials are not appearing before the trial. Therefore, this Court is of the view that considering the conduct of the prosecution witnesses who are official witnesses in not appearing before the Court, the arguments raised by the learned counsel for the petitioner that the present case has been planted upon the petitioner appears to be reasonable and justified at least at this stage. Although these observations would not be deemed to have any effect on the merits of the case but for the purpose of considering the bar contained under Section 37 of the NDPS Act this Court is of the view that at least at this stage considering the aforesaid facts and circumstances this Court has reasons to believe that the petitioner is not guilty of offence. So far as the second ingredient for making the departure from the bar contained under Section 37 of the NDPS Act is concerned, it is not a case of the State nor it has been argued by learned State counsel that in case the petitioner is released on bail then he may abscond from justice or repeat the offence. Therefore, both the ingredients for making a departure from Section 37 of the NDPS Act remain satisfied. Apart from the same, the alleged recovery was about 275 gms of Tramadol, which is marginally higher than the prescribed commercial quantity of 250 gms. The pendency of another case

under the NDPS Act against the petitioner cannot become a bar for granting bail to the petitioner.

Therefore, in view of the aforesaid facts and circumstances of the present case, this Court deems it fit and proper to grant bail to the petitioner. Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety bonds 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.

11.07.2022
monika

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable Yes/No