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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-8252-2022
Date of Decision: 05.07.2022

Boota Singh

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. S.C. Sabharwal, Advocate, for the petitioner.

Mr. Davinder Bir Singh, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

The present is a second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No. 0021 dated 21.02.2021, under Section 22(C)/61/85 of NDPS Act, 1985, registered at Police Station Kabar Wala, District Sri Muktsar Sahib.

It has been submitted by the learned counsel for the petitioner that the petitioner is in custody from 21.02.2021 which is about 1 year and 4 months. The investigation of the case was completed long back and challan was also presented and thereafter, the charges were framed on 20.07.2021. He further submitted that as per the allegations contained in the FIR the police party had allegedly seen the petitioner alongwith a plastic bag which allegedly he threw away on the floor from where some intoxicant tablets were found. He further submitted that the prosecution story on the face of it

was totally improbable and he has been falsely implicated in the present case due to political reasons and in fact, he was earlier involved in case pertaining to small quantity under the NDPS Act in which he was convicted and he has undergone sentence and it was due to this reason that the petitioner was falsely implicated in the present case falsely by the police. He submitted that be that as it may after the charges were framed, it was the duty of the prosecution to cause appearance before the learned trial Court for the purpose of deposing as a prosecution witness whereas while referring to Annexure P-2 the petitioner has attached the interlocutory orders passed by the learned trial Court from where it can be seen that repeatedly the prosecution witnesses were summoned but they did not appear and most of the times it has been recorded by the learned trial Court that the summons issued to the witnesses have not been received back and they were summoned repeatedly. Seven such orders have been attached with the present petition till January, 2022. He further submitted that thereafter, the matter was adjourned for 5 times and similar orders were passed and total 12 times the prosecution witnesses who are the official witnesses have been summoned but deliberately they have not stepped into the witness box because the case was a fabricated case against the petitioner. He further submitted that although the alleged quantity in the present case was 2050 tablets of Tramadol which falls in the category of commercial quantity but the bar contained under Section 37 of the NDPS Act will not apply in the present case in view of the aforesaid facts and circumstances and the conduct of the prosecution itself. He further submitted that they are deliberately not appearing before the learned trial Court for more than 12 times because they had in fact planted the case against the petitioner which

prima facie goes into show that the petitioner is not guilty of the offence and, therefore, the bar contained under Section 37 of the NDPS Act will not apply.

Mr. Davinder Bir Singh, learned Deputy Advocate General, Punjab has submitted that it is correct that the petitioner is in custody from 21.02.2021 and the charges were frame don 20.07.2021 and thereafter repeatedly the prosecution witnesses who are the official witnesses in the present case have been summoned for about 12 times but they had not come and depose before the Court.

I have heard the learned counsel for the parties.

A specific query was put to the learned Deputy Advocate General, Punjab as to whether there is any justification for non-appearance as a prosecution witness for about 12 times which resulted in the delay of the trial and caused prejudice to the petitioner, he was not able to justify or to give any reason in this regard. The matter pertains to NDPS Act and the witnesses are official witnesses. There is no justification coming forward as to why and under what circumstances the prosecution witnesses have not appeared despite the fact that they were repeatedly summoned by the learned trial Court. Therefore, the argument raised by the learned counsel for the petitioner that the case was planted and that was the reason as to why the prosecution witnesses are not coming forward for deposing before the learned trial Court seems to be reasonable. This Court does not wish to go into the merits of the case but for the purpose of considering the application for bail and especially the bar contained under Section 37 of the NDPS Act, the conduct of the prosecution in causing the delay and non-appearance would be certainly a relevant factor for considering the prayer of the

petitioner for grant of bail. This Court is of the view that the aforesaid conduct of the prosecution for non-appearance for large number of time despite summons being issued by the Court would become a ground to satisfy itself that the petitioner is *prima facie* not guilty of offence at least at this stage. So far as the second ingredient with regard to making a departure from the bar contained under Section 37 of the NDPS Act is concerned, it is not the case of the State nor it has been argued by the learned State counsel that in case the petitioner is released on bail, then he may repeat the offence or may abscond. Therefore, both the ingredients for the purpose of departure from the bar contained under Section 37 of the NDPS remain satisfied.

Therefore, without commenting on the merits of the case and considering the totality of circumstances, 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.

05.07.2022

rakesh

**(JASGURPREET SINGH PURI)
JUDGE**

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No