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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-14510-2022
Date of Decision: 18.04.2022

Surinder Singh Timpa

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. S.K. Guleria, Advocate, for the petitioner.

Mr. Randhir Singh Thind, 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. 218 dated 30.06.2020, under Sections 22/61/85 of NDPS Act, registered at Police Station Sohana, District SAS Nagar, Mohali.

The learned counsel for the petitioner has submitted that the petitioner is in custody from 30.06.2020 and the charges in the present case were framed on 03.03.2021 and thereafter for a number of times the prosecution witnesses were summoned and evenailable warrants were also issued against all the official witnesses who had allegedly apprehended the petitioner. He further submitted that the present case was planted upon the petitioner wherein 1300 tablets of Covidol-100 SR and 600 tablets of

Alprazolam were allegedly recovered from the petitioner. He further submitted that the petitioner is not involved in any other case pertaining to NDPS Act and has also referred to various zimni orders which have been passed by the learned trial Court whereby repeatedly summons were issued to the police party which had allegedly caught the petitioner and even bailable warrants were also issued and it is now more than 1 year that prosecution witness has been examined and the delay is being caused only at the hands of the prosecution witnesses. He further submitted that since the present case was planted upon the petitioner and that was the reason as to why the official witnesses are not coming forward to step into the witness box and resultantly the petitioner is facing incarceration for about 1 ½ years. He further submitted that even if the alleged confiscated quantity falls within the ambit of the commercial quantity the case of the petitioner will not be hit by the bar contained under Section 37 of the NDPS Act because of the aforesaid reasons mentioned.

On the other hand, Mr. Randhir Singh Thind, learned Deputy Advocate General, Punjab has stated that it is correct that the petitioner is in custody from 30.06.2020 and charges were framed on 03.03.2021. He further submitted that since it was a case of confiscation of 1900 tablets which falls under the commercial quantity, the petitioner is not entitled for the grant of regular bail. He further submitted that it is correct that the petitioner is not involved in any other case pertaining to the NDPS Act.

I have heard the learned counsel for the parties.

The petitioner is in custody from 30.06.2020. The charges were framed on 03.03.2021. In the petition itself the zimni orders have been

reproduced. A perusal of the same would show that for a number of times the learned Special Judge, Special Court, Mohali has summoned the prosecution witnesses who are the official witnesses in the present case who had allegedly apprehended the petitioner but they have failed to step into the witness box repeatedly and the Special Judge was also constrained to issue bailable warrants against them. No justifiable explanation has come forward from the State as to why the official witnesses have not appeared despite number of adjournments and summons/warrants issued to them. The petitioner is not involved in any other case pertaining to NDPS Act as per the learned counsel for the parties. Therefore, this Court is of the view that considering the conduct of the official witnesses *prima facie* this Court is of the view that there are reasons to believe that the petitioner is not guilty of offence. So far as the second ingredient pertaining 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 pleaded by the learned Deputy Advocate General, Punjab that in case the petitioner is released on bail, then he may repeat the offence or may flee from justice. Therefore, both the ingredients for making a departure from the bar contained under Section 37 of the NDPS Act remain satisfied. Therefore, the bar contained under Section 37 of the NDPS Act would not apply at least at this stage.

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.

18.04.2022
rakesh

(JASGURPREET SINGH PURI)
JUDGE

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