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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-14790-2022 (O&M)
Date of Decision: 23.05.2022

Anil Kumar Kaushik

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Bipin Ghai, Senior Advocate assisted by
Mr. Manjot Singh, Advocate,
Mr. Parnav Chada, Advocate and
Mr. Prabhdeep Singh Bindra, Advocate, for the petitioner.

Mr. Davinder Bir Singh, Deputy Advocate General, 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. 104 dated 23.05.2021, under Sections 22 (C)/29/61/85 of NPDS Act, registered at Police Station City Kotkapura, District Faridkot.

It has been submitted by the learned Senior Counsel for the petitioner that the petitioner is in custody from 28.05.2021 which is almost one year and charges have been framed on 25.02.2022 and till date no prosecution witness has been examined. He further submitted that it is a case where the police apprehended two persons namely, Jaspal Singh Harjinder Singh @ Kala and from them there was a recovery of 31020

tablets of Lomotil which contained the salt of Tramadol. It was thereafter that the name of the petitioner was nominated on the basis of disclosure statement on the ground that the aforesaid persons had stated in their disclosure statement that they had purchased the tablets from the petitioner. The learned Senior Counsel further submitted that the petitioner is a retailer of medicines and he has got a valid licence for that purpose. He further submitted that during the course of investigation which was conducted by the Deputy Superintendent of Police, Faridkot and which was approved by the by the Deputy Inspector General of Police, Faridkot Range vide Annexure P-4 and after thorough investigation it was found that one of the co-accused Harjinder Singh had purchased 840 tablets of Lomotil from the petitioner after taking copy of his licence. Thereafter, 1140 tables of Lomotil have been recovered from the petitioner thereafter. However, during the course of investigation the aforesaid 1140 tablets of Lomotil were duly accounted for by the petitioner since he had got the valid bills from the manufacturer/distributor and so far as the aforesaid 840 tablets of Lomotil which were purchased by the co-accused Harjinder Singh are concerned, the same were also against the bill and, therefore, there was no illegality in selling of the tablets by the petitioner to the other co-accused namely Harjinder Singh. The learned Senior Counsel further submitted that in fact quantity of 840 tablets of Lomotil are not ordinarily sold by the Chemist/dealer but the co-accused Harjinder Singh had supplied a copy of his licence to the petitioner pretending that he was competent to keep the tablets of Lomotil, which otherwise were later on found to be forged by the police. The learned Senior Counsel further submitted that so far as the

present petitioner is concerned, he had acted on a good faith on the basis of the licence produced by the co-accused Harjinder Singh and in this way vide Annexure P-4 the police found the petitioner to be innocent and therefore, he was exonerated by the police. The said exoneration by the Deputy Superintendent of Police was approved by the higher authorities including the Deputy Inspector General of Police. The learned Senior Counsel further submitted that at the most in case the petitioner has sold a little excess of the tablets than the permissible limit, still the provisions of the NDPS Act would not apply to the petitioner. Learned Senior Counsel further submitted that the petitioner is not involved in any other case and has got clean antecedents and in view of the facts and circumstances of the case, the rigors of Section 37 of the NDPS Act will not apply to the petitioner.

On the other hand, Mr. Davinder Bir Singh, learned Deputy Advocate General, Punjab has submitted that an affidavit has been filed by the Deputy Superintendent of Police, Sub Division Kotkapura, District Faridkot and while referring to the same, he has submitted that it is correct that the name of the petitioner was nominated purely on the basis of the disclosure statement of the co-accused. He further submitted that it is also correct that the petitioner is in custody from 28.05.2021 and he is not involved in any other case. He further submitted that it is also correct that a thorough inquiry was conducted by the Deputy Superintendent of Police. Kotkapura which was approved by the higher authorities and it was found that the petitioner is innocent but when the application for discharge was moved before the learned trial Court qua the petitioner, the same was not

accepted by the learned trial Court and now the charges have been framed against all the accused persons.

I have heard the learned counsel for the parties.

It is a case where the petitioner was nominated on the basis of the disclosure statement made by the co-accused namely Harjinder Singh. The facts which had emerged from the investigation conducted by the police would show that the petitioner was exonerated by the police vide Annexure P-4 and the same was also got approved by the higher authorities including the Deputy Inspector General of Police. The discharge application moved by the police was not accepted by the learned trial Court and the charges were framed against him as well alongwith the other co-accused. As per the investigation report Annexure P-4 the petitioner had sold 840 tablets of Lomotill having the salt of Tramadol to the co-accused Harjinder Singh and the aforesaid Harjinder Singh had supplied a copy of his licence that he was competent to purchase and retain this much quantity of tablets, which otherwise later on it was found that the licence supplied by Harjinder Singh was forged. So far as the other recovery of 1140 tablets of Lomolil which were recovered from the petitioner are concerned, they were compared with the record of the petitioner and they were found to be validly purchased and in this way, the police found the petitioner innocent. The petitioner is not involved in any other case as per the learned counsel for the parties. The petitioner has already faced incarceration for about one year.

However, the effect of Section 37 of the NDPS Act would also be required to be considered since the quantity involved was of

commercial quantity. The facts of the present case suggest that the role of the petitioner pertains to 840 tablets of Lomotil sold to co-accused Harjinder Singh and another set of 1140 tablets of Lomotil which were recovered from him. Both the issues were gone in detail by the police and the petitioner was found to be innocent. The police thereafter filed a discharge application before the learned trial Court which ultimately was not accepted and charges have been framed against the petitioner. Therefore, at this stage, this Court is of the more than prima facie view that in view of the aforesaid facts and circumstances there are reasons to believe that the petitioner is not guilty of the offence for the purpose of considering the bar contained under Section 37 of the NDPS Act. So far as the second ingredient for making a departure from Section 37 of the NDPS Act is concerned, a perusal of the affidavit filed by the State as well as the arguments raised by the learned State counsel there is nothing on record to suggest nor the learned State counsel has pleaded that in case the petitioner is released on bail, then he may influence any witness or may repeat the offence or may abscond from justice. Therefore, both the ingredients for making a departure from the bar contained under Section 37 of the NDPS Act remain satisfied particularly in view of the aforesaid facts and circumstances and also that the petitioner is not involved in any other case.

Therefore, without commenting on the merit of the case and considering the totality of circumstance, 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.

All the miscellaneous applications, if any, shall be deemed to be disposed of since the main case has been disposed of.

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.

23.05.2022
rakesh

(JASGURPREET SINGH PURI)
JUDGE

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