

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

219

CRM-M-22037-2021

Date of Decision : July 20, 2022

Jagga Singh @ Jagga

.....Petitioner

VERSUS

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr.Balbir Kumar Saini, Advocate
for the petitioner.

Mr.R.S.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.76 dated 05.06.2018 under Sections 15/22/61 and 85 of NDPS Act, registered at Police Station Ghall Khurd, District Ferozepur.

It has been submitted by the learned counsel for the petitioner that the petitioner is in custody since 05.06.2018 and only three witnesses have been examined. He submitted that the petitioner has been falsely implicated in the present case and has faced incarceration for a long period. He has further submitted that although the petitioner is involved in another case under the NDPS Act but in that case he was nominated on the basis of the disclosure statement and submitted that in view of the fact that there is a delay in the trial, the petitioner may be considered for grant of bail. He further referred to the FSL report by stating that the batch number was not mentioned on the FSL report and that also constitutes a good ground for grant of bail to the petitioner. He

further submitted that no independent witness has been examined in the present case and even the investigating officer at the time of cross examination has also made inconsistent statements.

On the other hand, Mr.R.S.Thind, DAG Punjab has submitted that it is correct that the petitioner is in custody since 05.06.2018. He further submits that in the present case the petitioner was apprehended and there was a huge recovery from him, which was 800 tablets of alprazolam, 790 tablets of Realdo-SR, 1500 tablets of Calvidol 100-SR and 7 kgs of poppy husk and the entire contraband falls in the category of commercial quantity and therefore the prayer of the petitioner for grant of regular bail is hit by the bar contained under Section 37 of the NDPS Act.

He further submitted that there is no ground available with petitioner to make a departure from the aforesaid bar. He submitted that the petitioner is a habitual offender and he is also involved in another case under the NDPS Act bearing FIR No.26 dated 15.03.2021, under Section 22 of the NDPS Act, in which he is under trial. He further submitted that the mere non-mentioning of batch number in the FSL report cannot be a ground for grant of bail in view of the fact that the strips which were confiscated were labelled strips with the name of the tablet and samples were drawn in the presence of the Magistrate and were sent to the forensic laboratory and therefore the arguments raised by learned counsel for the petitioner are not sustainable. He further submitted that it is totally incorrect and wrong that there are material discrepancies in the statement made by the investigating officer before the Court.

I have heard the learned counsel for the parties.

The petitioner has faced incarceration for a period of 01 year, 04 months and 08 days, as per learned State counsel. There has been a recovery of tablets of different salts from the petitioner and the same falls within the category of commercial quantity. The petitioner is also involved in another case under the NDPS Act. The fact that the batch number was not mentioned in the FSL report does not vest any right for making a departure from Section 37 of the NDPS Act, since it cannot be termed as a ground on the basis of which the Court has a reason to believe that the petitioner is not guilty of the offence. So far as the alleged discrepancies as stated by learned counsel for the petitioner in the statement of the investigating officer but denied by the learned State counsel is concerned, the same is also a matter of trial and would be seen by the trial Court at the time of adjudication of the case but at this stage it cannot be said that it constitutes a ground to have a reason to believe that the petitioner is not guilty of the offence.

The Hon'ble Supreme Court in the case of ***“State of Kerala versus Rajesh and others”***, 2020(12) SCC 122, decided on 24.01.2020 and a recent judgment of the Hon'ble Supreme Court in ***“Narcotics Control Bureau vs. Mohit Aggarwal”***, CRA-1001-1002 of 2022, decided on 19.07.2022, has held that whenever a departure is to be made from Section 37 of the NDPS Act, then the Court has to be satisfied that there are reasons to believe that the petitioner is not guilty of the offence.

In the aforesaid facts and circumstances of the present case, this Court does not have any reason to believe that the petitioner is not guilty of the offence. In view of the above, the bar of Section 37 of the

NDPS Act applies in the present case and therefore finding no merit in the petition, the same is dismissed.

However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

(JASGURPREET SINGH PURI)
JUDGE

20.07.2022

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Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No