

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

223

CRM-M-28674 of 2022
Date of Decision:28.09.2022

Ashwani Kumar @ Ashni Kumar

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Manoj R. Sharma, Advocate
for the petitioner.

Mr. Kunal Vinayak, AAG, 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.23 dated 27.03.2022, under Sections 22 of the NDPS Act, registered at Police Station Garhdiwala, District Hoshiarpur.

It has been submitted by the learned counsel for the petitioner that the petitioner is in custody from 27.03.2022 and after completion of the investigation, challan was presented to the competent Court and the charges in the present case were framed on 30.05.2022. He submitted that thereafter the official witnesses were summoned by the learned trial Court but they did not appear. Almost four months have elapsed but nobody has been examined till date. He referred to a

photocopy of the order dated 29.08.2022 passed by the learned trial Court, wherein it has been observed by the learned trial Court that the summons which were sent to ASI Darshan Singh were received back duly served but he did not turn up in the Court and now the aforesaid Darshan Singh has been summoned through bailable warrants to the tune of Rs.10,000/- with one surety in the like amount for 04.10.2022. Learned counsel while referring to the FIR submitted that the aforesaid ASI Darshan Singh was heading the police party which allegedly apprehended the petitioner and the present case pertains to the provisions of NDPS Act whereby the case is to be proved by the official witnesses. He submitted that it is the police who had set the criminal law into motion and the Court had to issue bailable warrants against the police official who headed the police party and for that there is no justification in this regard. He further submitted that it is a case where the petitioner is having clean antecedents and is not involved in any other case and is not a habitual offender and the allegations in the FIR were that the police party after receiving an information went to a place where allegedly the petitioner was sitting and carrying some plastic bag which he threw on the grass and the recovery was made from the grass and not from the petitioner and the alleged recovery was of 1028 tablets of Alprazolam. He further submitted that even otherwise also as per the prosecution, the tablets were loose and only ten tablets were drawn as sample and sent to the Forensic Science Laboratory although drawn in the presence of the Magistrate. He further submitted that it is a pure and simple case of false implication because of two reasons, firstly, as per the prosecution itself the alleged recovery was effected from the grass and not from the petitioner and secondly the police party was headed by one ASI Darshan Singh who

abstained himself from the Court despite being served and the Court was constrained to issue bailable warrants against him. He further submitted that coupled with the fact that the petitioner has clean antecedents and therefore he may be considered for the grant of regular bail since rigour of Section 37 of the NDPS Act would not apply in the present case.

On the other hand, Mr. Kunal Vinayak, learned AAG, Punjab has stated that it is correct that the petitioner is in custody from 27.03.2022 and no prosecution witness has been examined in the present case despite the fact that the charges were framed on 30.05.2022. He has also submitted that it is also correct that the petitioner is not involved in any other case. He has however opposed the grant of bail to the petitioner on that ground that the prayer of the petitioner is barred by Section 37 of the NDPS Act since the confiscated quantity was falling within the category of commercial quantity.

I have heard the learned counsel for the parties.

The petitioner has already faced incarceration for about 6 months. The charges were framed on 30.05.2022. Reference was made by the learned counsel for the petitioner to a photocopy of the order dated 29.08.2022 passed by the learned trial Court, whereby it has been so observed by the learned trial Court that the ASI Darshan Singh was served but he did not turn up and therefore bailable warrants have been issued against him. A perusal of the FIR would show that the aforesaid ASI Darshan Singh was heading the police party and whose instance the alleged recovery has been made. On a specific query being raised to the learned State counsel as to what is the justification that the Court was constrained to issue bailable warrants against the police official who was heading the police party and why he did not appear despite being served. The learned State counsel was not

able to answer that query. Apart from the same, the recovery was not made from the conscious possession of the petitioner and as per the prosecution itself, it was made from the grass which according to the police the petitioner had thrown the packet in the grass however it appears that the trial has been delayed only because of the fault of the prosecution by not appearing. Reference in this regard may be made in a judgment of the Supreme Court in **Satender Kumar Antil v. Central Bureau of Investigation and another** 2022 SCC Online SC 825 . The petitioner is stated to be not involved in any other case. Therefore, while considering the effect of Section 37 of the NDPS Act in the present case, the facts and circumstances of the present case would show that there are *prima facie* reasons to believe at this stage at least that the petitioner is not guilty of the offence particularly in view of the fact that no justification has come from the learned State counsel as to why the official witness who was heading the police party did not depose before the Court despite being served and the Court was constrained to issue bailable warrants against him and the fact that the recovery was not made from the conscious possession of the petitioner but allegedly made from the grass where the petitioner was allegedly sitting. Apart from the same, the petitioner is not a habitual offender and as per the learned counsels for the parties he is not involved in any other case. Furthermore, it is not the case of the State counsel that in case the petitioner is released on bail, then he may repeat the offence or may abscond from justice. Therefore, this Court is of the view that both the ingredients for making a departure from the bar contained in Section 37 of the NDPS Act remain satisfied and hence at this stage at least the bar of Section 37 will not operate against the petitioner.

In view of the aforesaid fact and circumstances of the present case, this Court deems it fit and proper to grant regular bail to the petitioner. Consequently, 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 expresion of opinion on merits of the case and is only meant for the purpose of decision of present petition.

(JASGURPREET SINGH PURI)
JUDGE

September 28, 2022
dinesh

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