

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

244

CRM-M-27661 of 2022  
Date of Decision:20.12.2022

Hardeep Singh @ Hardeep Kumar @ Deepa

....Petitioner

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

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Present: Mr. L. S. Sekhon, Advocate,  
for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

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**JASGURPREET SINGH PURI, J. (Oral)**

The present second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.65 dated 28.04.2021, under Sections 22 and 29 of the NDPS Act, registered at Police Station City Sangrur, District Sangrur.

It is submitted by the learned counsel for the petitioner that it is a case where the petitioner is in custody for 1 year and 8 months and only 3 prosecution witnesses have been examined till date. He submitted that as per the prosecution story the police received an information that one Sandeep Kumar was coming on his way and contrabands can be recovered from him and it is also so mentioned in

the FIR that he had purchased the same from the present petitioner Hardeep Singh @ Hardeep Kumar. Thereafter, the aforesaid Sandeep Kumar was apprehended and on his disclosure statement the name of the petitioner was nominated on the ground that 850 tablets of Tramadol were purchased by him from the present petitioner. He further submitted that the petitioner is not a habitual offender and is not involved in any other case whatsoever and no recovery at all has been effected from him despite the fact that his name finds mentioned in the FIR that he had sold the same to the co-accused from where they made the alleged recovery of 850 tablets of Tramadol. He further submitted that even during the course of investigation there is not an iota of evidence or any other sufficient material to show the connectivity of the petitioner with the other co-accused namely Sandeep Kumar from whom recovery was effected and, therefore the bar contained under Section 37 of the NDPS Act will not apply in the present case and considering the aforesaid facts and circumstances especially the long custody of the petitioner, he may be considered for the grant of regular bail. Learned counsel for the petitioner also submitted that the other two co-accused namely Ranjeet Singh and Balaur Singh who were nominated on the basis of disclosure statement of co-accused Sandeep Kumar have been extended the benefit of regular bail by this Court vide Annexure P-2 and P-3 respectively. He also relied on a Division Bench judgment of this Court in **Dharamveer & another v. State of Punjab** (CRM-M-25433 of 2015, date of decision 07.10.2015) to contend that since there was no recovery from the petitioner and considering the antecedents of the petitioner, the bar contained under Section 37 of the NDPS Act will not apply.

On the other hand, learned State counsel has submitted that it is correct that the petitioner is in custody for 1 year and 8 months and 3 witnesses have been examined. He further submitted that it is also correct that 850 tablets of Tramadol were confiscated from the co-accused namely Sandeep Kumar regarding whom information was received by the police that he was coming on a motorcycle and so far as the present petitioner is concerned, his name was surfaced on the basis of the disclosure statement of the aforesaid co-accused. However, there was no information with the police that the present petitioner had supplied the contrabands to the aforesaid co-accused. He further submitted that it is correct that the petitioner is not a habitual offender and he is not involved in any other case whatsoever and the other two co-accused namely Balaur Singh and Ranjeet Singh have already been granted bail by this Court. He further submitted that apart from the above, the other co-accused namely Sandeep Kumar who was apprehended on the spot has already been released on interim bail by this Court.

I have heard learned counsel for the parties.

It is a case where the petitioner has faced incarceration for 1 year and 8 months. Admittedly, there is no recovery from the petitioner and there was a recovery of 850 tablets of Tramadol from the other co-accused namely Sandeep Kumar. The petitioner is stated to be not a habitual offender and not involved in any other case. Since there was a recovery of 850 tablets of Tramadol from the co-accused which falls under the category of commercial quantity the effect of Section 37 of the NDPS Act has to be considered in this regard. The facts and circumstances of the present case suggest that the petitioner who is not a habitual offender and is not involved in any other case was although named in the FIR by

stating that he had supplied the aforesaid tablets to the co-accused namely Sandeep Kumar who was apprehended at the spot but during the course of arguments a specific query was raised to the learned State counsel as to whether during the course of investigation any link evidence or any connectivity was found pertaining to any sufficient material to connect the petitioner except for the information which has been received by the police at the initial stage and the disclosure statement of the co-accused, learned State counsel on instruction from ASI Badal Singh has submitted that no such sufficient material or link evidence was found in this regard. Admittedly, no recovery has been effected from the petitioner. Therefore, considering the aforesaid facts and circumstances and considering the fact that the petitioner has already suffered incarceration for 1 year and 8 months, this Court is of the view that at least at this stage there are reasons to believe that the petitioner is not guilty of offence especially in view of the statement made by learned State counsel that during investigation no link evidence or any other sufficient material was found against the present petitioner. So far as the second ingredient for making a departure from the bar contained under Section 37 of the NDPS Act is concerned, it is the case of both the learned counsel for the parties that the petitioner is not a habitual offender nor it has been so argued by the learned State counsel that in case the petitioner is released on bail, then he may abscond from justice or he may repeat the offence. Therefore, both the ingredients for making a departure from the bar contained under Section 37 of the NDPS Act remain satisfied. Apart from the above, the reliance placed upon a Division Bench judgment of this Court would also be relevant since no recovery has been effected from the petitioner. The total period of custody of the petitioner would also be a

relevant factor for considering the grant of regular bail to him.

In view of the above, this Court is of the view that the petitioner deserves the concession of regular bail. 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 expression of opinion on merits of the case and is only meant for the purpose of decision of these two petitions.

(JASGURPREET SINGH PURI)  
JUDGE

December 20, 2022  
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| Whether speaking   | : | Yes/No |
| Whether reportable | : | Yes/No |