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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-38332-2021  
Date of Decision: 16.05.2022

Sukhpal Singh

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

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

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

Mr. Davinder Bir Singh, DAG, Punjab.

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

The present is the third petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No. 68 dated 12.06.2020, under Sections 22, 29/61/85 of NDPS Act, registered at Police Station City Rampura, Bathinda, District Bathinda.

It has been submitted by the learned counsel for the petitioner that as per the allegations contained in the FIR the police had seen the petitioner on a motorcycle and as per the allegation he had fallen down from the motorcycle alongwith a polythene bag which was transparent and some tablets scattered on the road and the petitioner was apprehended and there was a recovery of 1000 tablets of Colvidol 100-SR. He further submitted that the petitioner is in custody from 12.06.2020 and the investigation of the case has already been completed and charges were framed on

24.09.2021 and thereafter number of times the matter was taken up and no official witness appeared for deposing before the learned trial Court. He further submitted that the petitioner was apprehended by one SI Karam Singh and he alongwith the other PWs were summoned for about 9 times out of which twice bailable warrants were issued against the aforesaid SI Karam Singh but till date he has not come and deposed before the trial Court. He further submitted that the delay has been caused by the hands of the prosecution itself and there is no justification for the official witnesses who have absented themselves from the Court despite bailable warrants being issued to them and with the result that the petitioner has been facing incarceration for about 1 year and 11 months. He further submitted that the petitioner is not involved in any other case and has got clean antecedents and even as per the contents of the FIR the recovery was not from the conscious possession of the petitioner but as per the prosecution the transparent bag containing the tablets fell down alongwith the petitioner from where it was recovered. He further submitted that otherwise also the story put forward by the prosecution is totally improbable because in case the petitioner was to do any illegal activity pertaining to carrying of tablets, then he would not have carrying the same in a transparent polythene bag and it was a case of false implication of the petitioner who is not a habitual offender and has rather clean antecedents. He has therefore prayed for the grant of regular bail.

On the other hand, Mr. Davinder Bir Singh, learned Deputy Advocate General, Punjab. has stated that it is correct that the petitioner is in custody for about 1 year and 11 months and it is also correct that the petitioner is not involved in any other case. He has however opposed the

grant of bail on the ground that 1000 tablets of Colvidol 100-SR falls in the category of commercial quantity and, therefore, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

I have heard the learned counsel for the parties.

As per the FIR the petitioner on seeing the party allegedly had fallen down from the motorcycle alongwith the transparent polythene bag containing 1000 tablets of Colvidol 100-SR. The petitioner is not involved in any other case and has got clean antecedents as per the learned counsel for the parties. For the purpose of making a departure from the bar contained under Section 37 of the NDPS Act, so far as the second ingredient is concerned, the petitioner is not involved in any other case and it is not the case of the State that in case the petitioner is released on bail, then he may repeat the offence or may abscond from justice or may influence any witness. So far as the first ingredient for making a departure from the bar contained under Section 37 of the NDPS Act is concerned, the learned counsel for the petitioner has supplied photocopies of the interlocutory orders which were passed after the framing of the charges and which are taken on record as Mark-X. A perusal of the same would show that SI Karam Singh who is stated to have apprehended the petitioner was summoned for about 9 times out of which twiceailable warrants were also issued against him. On a query being asked to the learned State counsel as to why the prosecution witnesses including the person who has apprehended the petitioner is not coming forth, the learned State counsel has not been able to answer the query. Apparently the delay has been caused at the hands of the prosecution only and no justification has come forth as to

and why he has not appeared for deposing. The petitioner has been facing incarceration for about 1 year and 11 months and, therefore, non-appearance of the Sub Inspector who had apprehended the petitioner would create not only suspicion but an adverse inference can also be drawn with regard to the same. Therefore, this Court is more than prima facie satisfied at this stage that the petitioner is not guilty of the offence particularly in view of the conduct of the State itself and, therefore, both the ingredients for making a departure from the bar contained under Section 37 of the NDPS Act remain satisfied.

Therefore, this Court is of the view that the petitioner is entitled for the grant 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 meant for the purpose of deciding the present petition only.

**16.05.2022**

rakesh

**(JASGURPREET SINGH PURI)**  
**JUDGE**

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|--------------------|---|--------|
| Whether speaking   | : | Yes/No |
| Whether reportable | : | Yes/No |