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

**CRM-M-42283-2021 (O&M).
Decided on: March 21, 2022.**

Jasbir Kumar

.. Petitioner

VERSUS

State of Punjab

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.Sachin Ohri, Advocate,
for the petitioner.**

Mr.Randhir Singh Thind, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present second petition has been filed under Section 439 of the Code of Criminal Procedure, seeking regular bail in FIR No.187 dated 7.7.2020, registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Dinanagar, District Gurdaspur.

It has been submitted by the learned counsel for the petitioner that the petitioner is in custody since 17.3.2021 which is almost one year and in fact, the delay has occurred due to the fault of the

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prosecution. He submitted that earlier the petitioner was granted interim bail by the learned trial court since the FSL report had not come by that time and there is no misconduct on the part of the petitioner during the period he remained on interim bail. He submitted that when the FSL report was submitted, the petitioner was taken into custody since quantity involved was commercial quantity.

Learned counsel for the petitioner while referring to the zimni orders which have been sent by the learned trial Court to this Court, submitted that delay in the trial has been caused due to official witnesses. He referred to the zimni orders whereby on a number of occasions official witnesses who were part of the police party had been summoned through bailable warrants and it was only when this Court had passed order for seeking zimni orders that the official witnesses were examined. He submitted that even otherwise also as per the prosecution story stated in the FIR, the police party had allegedly seen the petitioner carrying some polythene bag but he threw away the bag and then the police party recovered the bag and in the bag about 1770 tablets were found, the weight of which came to be 652 grams. He submitted that the petitioner has clean antecedents and is not involved in any other case and there is no recovery from the conscious possession of the petitioner. He submitted that no independent witness was associated and there is no recovery from the petitioner and that was the reason why the police officials failed to discharge their duties by absenting themselves from the Court for the

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purpose of deposing during trial and on number of timesailable warrants were issued.

On the other hand, learned State counsel has submitted that quantity involved in the present case is commercial in nature. He submitted that it is correct that the petitioner is in custody since 17.3.2021 which is almost one year and there was no misconduct on the part of the petitioner during the period he remained on interim bail and it was only when FSL report was received, the petitioner was taken into custody because the quantity involved was of commercial nature. He submitted that it is also correct that the petitioner is not involved in any other case.

I have heard the learned counsel for the parties.

The petitioner is in custody since 17.3.2021 which is almost one year. Learned counsel for the petitioner has raised an argument that there was no recovery from the conscious possession of the petitioner and the recovery was made from the bag which was on the ground and the allegations against the petitioner were that he had thrown away the same bag. No independent witness was joined. Learned counsel for the petitioner has submitted that the petitioner is not involved in any other case and has got clean antecedents. The submissions made by the learned counsel for the petitioner has some force but still the matter has to be considered from the angle of bar contained under Section 37 of the NDPS Act. The conduct of the official witnesses would also be relevant. The learned trial Court had repeatedly summoned the official witnesses who were members of the

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police party for number of times throughailable warrants issued against them for depositing which is an important aspect. It is not understood as to why the Court had to issueailable warrants to the police officials for securing their presence for deposition. Apart from the same, there was no recovery effected from the petitioner. Further, the petitioner is having clean antecedents as per the learned counsel for the parties and 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 influence any witness or may tamper with any evidence or may flee from justice. Therefore, at least, at this stage, both the ingredients of Section 37 of the NDPS Act, for making a departure stand satisfied and this Court has reasons to believe, at this stage, that the petitioner is not guilty of the offence.

Therefore, considering the totality of the circumstances of the present case, this Court deems it fit and proper to grant regular bail to the petitioner. Accordingly, the present petition is allowed. It is ordered that the petitioner shall be released on bail on furnishing bail bond/surety bond to the satisfaction of the 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 only for the purpose of decision of present petition.

March 21, 2022.
raj arora

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No