

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

**238**

**CRM-M-38508-2022**

Date of Decision: November 29, 2022

Kaalu @ Kala Singh

-----Petitioner

Versus

State of Punjab

..Respondent

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

Present: Mr. Amit Arora, 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 grant of regular bail to the petitioner in case FIR No.0058 dated 14.07.2021 under Sections 22, 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') registered at Police Station Valtaha, District Tarn Taran.

It has been submitted that the petitioner is in custody from 15.07.2021 and thereafter he was granted interim bail by the learned trial Court since FSL report had not come. Thereafter, after receipt of the FSL report, he surrendered before the trial Court and in this way his total custody is about 11 months. Learned counsel has further submitted that it is a case where the name of the petitioner has been nominated on the basis of the disclosure statement of co-accused Mukhtiar Singh, from whom there was alleged recovery of 520 intoxicant tablets consisting of 220 tablet of Etizolam and 300 tablet of Diphenoxylate Hydrochloride. He has further submitted that although the recovery from the co-accused falls within the commercial quantity but the bar contained under Section 37 of the NDPS Act will not apply to the present petition due to following reasons:

1. The petitioner's name has been nominated on the basis of a disclosure statement of co-accused Mukhtiar Singh, thereafter, the Police has conducted the investigation and the challan has been presented but there is no material available at all with the Police to connect the present petitioner in the present FIR except for the disclosure statement of co-accused, which is otherwise not admissible in evidence in view of judgment of Hon'ble Supreme Court in **Tofan Singh Vs. State of Tamil Nadu, 2021 (1) RCR (Criminal) 1.**
2. The petitioner is not a habitual offender and is not involved in any other case except for one case under the NDPS Act. It was only because of involvement of the petitioner in the other case under the NDPS Act that he has now been falsely implicated in this case.
3. The petitioner is physically handicapped from Polio and is suffering from 70% disability. A photocopy of the handicapped certificate has been supplied to this Court during the course of proceedings, which is taken on record as Mark 'X'.
4. The charges in the present case were framed on 09.02.2022, and thereafter, 13 times the matter was adjourned by the trial Court but till now not even a single witness has been examined. Under the NDPS Act, normally the witnesses are the official witness, apart from some experts witness and some independent witness, if any, and the criminal law is brought into motion by the police officers themselves. It is the duty of the Police to depose before the Court once the trial has started but in the present case despite 13 opportunities, the prosecution has not been able to examine any witness. It was only at the hands of the prosecution that the petitioner has suffered such incarceration. Learned counsel has referred to judgment of Hon'ble the Supreme Court in **Satender Kumar Antil Vs. Central Bureau of Investigation and another** passed in **SLP (Crl.) No.5191 of 2021** decided on **11.07.2022** and contended that the right to speedy trial is a fundamental right and there should not be repeated adjournments.

On the other hand, Mr. Vinayak, learned AAG, Punjab has submitted that the petitioner is in custody from 15.07.2021 and he has faced incarceration for about 9 months after excluding the interim bail granted to the petitioner. He has further submitted that prayer of the petitioner for grant of regular bail will be hit by bar contained under Section 37 of the NDPS Act because the recovery from the co-accused falls under the category of commercial quantity. He has further submitted that the petitioner is involved in one more case under the NDPS Act.

I have heard learned counsel for the parties.

At the outset, a specific query was raised to the learned counsel for the State as to whether there is any sufficient material available with the prosecution to connect the present petitioner with the alleged offence except for the disclosure statement made by the co-accused, he sought instructions from ASI Dalbir Singh, who is present in Court, and stated that except for the disclosure statement, there is no evidence with the police to connect petitioner with the alleged offence. Thereafter, another query was raised to the learned State counsel as to what is justification for not deposing before the Court on 13 dates after framing of the charges with the result that the petitioner had to face incarceration for a long period of time, learned State counsel again could not answer the same.

Therefore, considering the objection raised by learned State counsel with regard to applicability of Section 37 of NDPS Act, this Court is of the considered view that in view of facts and circumstances whereby the petitioner's name has been nominated on the basis of a disclosure statement and even as per learned counsel for the parties there is no evidence at all available with the prosecution to connect the present

petitioner with the alleged offence except for the disclosure statement of co-accused apart from the fact that the petitioner being a handicap to the extent of 70%, this Court is of the considered view that at least at this stage, there are prima facie reasons to believe that petitioner is not guilty of offence. 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 not the case of the State that in case the petitioner is released on bail, then he may abscond or flee from justice or may influence any witness or may repeat the offence.

In view of the aforesaid facts and circumstances, this Court deems it fit and proper to grant bail to the petitioner. Consequently, the petitioner is ordered to be released on bail on furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

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**

**29.11.2022**

*Atul*

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