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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRM-M-43995-2020 (O&M)
Date of Decision: 31.05.2022**

Sukhjinder Singh alias Major Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Gurinder Singh Hayer, Advocate,
for the petitioner.

Mr. Davinder Bir Singh, DAG, 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 bearing FIR No.75 dated 24.05.2018, under Section 22 of the N.D.P.S. Act, 1985, registered at Police Station Dharamkot, District Moga.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 24.05.2018 and thereafter, he was granted interim bail on 03.08.2018 and he remained on interim bail till 22.07.2019 and in this way the petitioner has faced incarceration for 3 years and 19 days as of today. He further submitted that as per the allegations contained in the FIR, the petitioner was caught with 200 grams of *Alprazolam* which although falls in the category of commercial quantity under the N.D.P.S. Act but in the present case, the petitioner was falsely implicated by the Police due to previous rivalry. He also submitted that as per the allegations

contained in the FIR, the Police was on patrolling duty and they saw the petitioner, who after looking at the police party turned back and threw a packet on the ground and he was apprehended on the spot. He further submitted that the petitioner is having clean antecedents and is not involved at all in any other case and the petitioner was falsely implicated by the Police. He also submitted that the same can be corroborated from the fact that the charges in the present case were framed on 26.07.2019 and thereafter, for various dates the prosecution witnesses were summoned and he has referred to the zimni orders passed by the learned trial Court starting from 02.11.2021 to show that for 10 dates, the prosecution witnesses were summoned and twiceailable warrants were also issued against the official witnesses and during this period only one witness was examined and thereafter, now three more official witnesses have been examined. He further submitted that the prosecution and the police rather failed to discharge its duties and consequently, the trial Court had to issueailable warrants in a sum of Rs.5000/- with surety for two times with the result that the entire trial was delayed. He also submitted that the non-appearance of the official witnesses would show that the petitioner was falsely implicated in the present case as a result of the same, the petitioner has faced incarceration for more than three years and still the case is fixed for prosecution evidence and the rights of the petitioner have been severely jeopardized especially in view of the fact that the petitioner has clean antecedents and is not involved in any other case. He further submitted that rigor of Section 37 of the N.D.P.S. Act will not apply in the present case in view of the aforesaid facts and circumstances.

On the other hand, Mr. Davinder Bir Singh, learned DAG, Punjab, has filed a custody certificate of the petitioner, which is taken on record. He submitted while referring to the custody certificate that it is correct that the petitioner has faced incarceration for 3 years and 19 days and it is also correct that the petitioner is not involved in any other case.

On a query being raised to the learned DAG, Punjab that as to what is justification for the non-appearance of official respondents for so many years, he was not able to justify the same.

I have heard the learned counsel for the parties.

It is not in dispute that the petitioner has faced incarceration for 3 years and 19 days and the alleged recovery from the petitioner was 200 grams of *Alprazolam* and also the petitioner is not involved in any other case as per the learned counsel for the parties. A perusal of the photocopy of the zimni orders produced by the learned counsel for the petitioner would show that twiceailable warrants were issued to the prosecution witnesses, who are the official witnesses and still they did not appear and for 10 dates only one official witness had appeared and some of them were issuedailable warrants. No justification has come from the learned State counsel as to why the Court had to issue theailable warrants for two times to the official witnesses. The consequence of the same was that the petitioner had to suffer incarceration for more than 3 years.

In view of the aforesaid position, this Court would now consider the effect of Section 37 of the N.D.P.S. Act since the alleged recovery of 200 grams was of a commercial quantity. The conduct of the prosecution for not stepping into the witness box for more than two years

after the framing of charges on 26.07.2019 and issuance of bailable warrants against them would make a *prima facie* case in favour of the petitioner. Therefore, in view of the conduct of the prosecution, this Court has *prima facie* reasons to believe at least at this stage that the petitioner is not guilty of any offence. So far as the second ingredient for making a departure from the bar contained under Section 37 of the N.D.P.S. Act is concerned, admittedly the petitioner has got clean antecedents and is not involved in any other case and apart from the same, 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 repeat the offence or may abscond or flee from justice. Therefore, both the conditions for making a departure from the bar contained under Section 37 of the N.D.P.S. Act remain satisfied. Furthermore, the long incarceration of the petitioner which is more than 3 years would also become a ground for grant of bail to the petitioner. Therefore, considering the aforesaid facts and circumstances, this Court is of the considered view that the petitioner deserves the concession of bail.

Consequently, the present petition is allowed and the petitioner is ordered to be released on bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

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 present petition.

31.05.2022

Bhumika

(JASGURPREET SINGH PURI)

JUDGE

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| 1. Whether speaking/reasoned: | Yes |
| 2. Whether reportable: | Yes/No |