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

**CRM-M-44529-2022
Date of Decision: 29.09.2022**

Basant Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Riffi Birla, Advocate,
for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present is a second petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.51 dated 22.02.2020, under Section 22 of the N.D.P.S. Act, 1985, registered at Police Station Sadar Fazilka, District Fazilka.

Learned counsel appearing on behalf of the petitioner has submitted that the petitioner is in custody since 22.02.2020 and the charges in the present case have been framed on 03.02.2022. She further submitted that after the petitioner was arrested, he was granted interim bail by the learned trial Court on 23.06.2020, since the FSL Report had not come and thereafter, on the receipt of the FSL Report, the petitioner himself

surrendered on 04.02.2022 and has not violated any conditions of bail. She also submitted that the petitioner has got clean antecedents and is not involved in any other case and is not a habitual offender. She further submitted that as per the allegations, a secret information was received by the police on the basis of which, the petitioner was spotted on a motorcycle but there was no recovery effected from the conscious possession of the petitioner and even as per the prosecution, a bag was lying on the ground, from which there was allegedly a recovery of 900 tablets consisting salt of *Tramadol Hydrochloride* which is marginally higher than the prescribed commercial quantity under the NDPS Act since the total weight came to be around 375.28 grams.

Learned counsel for the petitioner has further submitted that it is a case where the FIR was registered in the year 2020 and the charges were framed in the year 2022 i.e. on 03.02.2022 but thereafter, about six adjournments were made and on none of the dates any prosecution witness had appeared and in that regard she has referred to Annexure P-4 (Colly.) therein, the zimni orders have been attached to show that on number of occasions, it has been observed by the learned trial Court that no prosecution witness is present and in the result the entire trial has been delayed. She also submitted that it is a case where the petitioner is not involved in any other case and a recovery has been planted upon the petitioner pertaining to a quantity which is marginally higher than the commercial quantity only in order to falsely implicate the petitioner. She submitted that since it is a case under the NDPS Act and the witnesses are only official witnesses. She further submitted that in such like cases, the

criminal law is set into motion by the police party and they are the only official witnesses but they themselves repeatedly do not step into the witness box and there is no justification coming forward as to why they have not come to the Court for deposing for a number of months i.e. from 03.02.2022 to till date, which is more than seven months. She further submitted that considering the antecedents of the petitioner and the alleged recovery which is marginally higher than the commercial quantity the petitioner has already faced incarceration about one year and the delay has been caused at the hands of the prosecution itself for which there has no justification, he may be considered for the grant of regular bail. The learned counsel for the petitioner further referred to the latest judgment of the Hon'ble Supreme Court passed in “Satender Kumar Antil Vs. Central Bureau of Investigation and another”, 2022 AIR (SC) 3386, and has stated that the right to speedy trial is a part of Fundamental Right. She also submitted that in view of the aforesaid peculiar facts and circumstances, the petitioner may be considered for the grant of regular bail.

On the other hand, Mr. Kunal Vinayak, learned AAG, Punjab, has submitted that it is correct that the petitioner is in custody since 22.02.2020, and thereafter for some time, he was granted interim bail on the ground that the FSL report was not obtained and thereafter, he had surrendered on time and has not violated any conditions of the bail. He further submitted that it is also correct that the petitioner is not involved in any other case and the alleged recovery from the petitioner was 900 tablets consisting salt *Tramadol Hydrochloride* which is marginally higher than the commercial quantity. He has however, opposed the grant of regular bail to

the petitioner on the ground of bar contained under Section 37 of the NDPS Act.

I have heard the learned counsel for the parties.

The petitioner in the present case was arrested on 22.02.2020 and thereafter, was granted interim bail and as per the learned counsel for the parties, he surrendered within the time on his own and did not violate any conditions of bail. The petitioner is undisputedly not involved in any other case and has got clean antecedents. The allegedly recovery is 900 tablets consisting salt of *Tramadol Hydrochloride*, weighing 375.28 grams which is marginally higher than the commercial quantity but the same is not from the conscious possession of the petitioner as the same is from the bag lying on the ground. The petitioner has already faced incarceration for about one year.

Since the confiscated quantity is marginally higher than the commercial quantity, the prayer of the petitioner has to be considered in the light of Section 37 of the NDPS Act. On a specific query being raised to the learned State counsel as to what is the justification for the prosecution witnesses, who are the official witnesses only, for not appearing before the Court for deposing for about six dates after the framing of the charges on 03.02.2022, he could not offer any explanation despite the fact that one police officer has also come for assisting him and after taking instructions from him, he stated that there was no justification for the absence from the Court for six dates. The present case is pertaining to NDPS Act where the prosecution witnesses are the official witnesses only. The police has itself set the criminal law into motion. The petitioner has faced incarceration for

about one year and on the face of it, the delay has been caused by the prosecution itself. In the latest judgment of the Hon'ble Supreme Court in **Satender Kumar Antil's case (supra)**, this aspect of delay at the hands of the prosecution has been dealt with in detail. Therefore, considering all the aforesaid factors i.e. Incarceration for one year, clean antecedents of the petitioner, no recovery from the conscious possession of the petitioner and the conduct of the prosecution whereby for about six dates they did not bother to appear before the learned Trial Court for deposing which caused unreasonable delay, would therefore, lead to an inference that the argument raised by the learned counsel for the petitioner that the petitioner has been falsely implicated in the present case would be justified. Therefore, considering the aforesaid facts and circumstances, this Court is of the view that there are *prima facie* reasons to believe that the petitioner is not guilty of offence at least at this stage. So far as the second ingredient for making a departure from bar contained under Section 37 of the N.D.P.S. Act is concerned, the petitioner is stated to be not involved in any other case and is having clean antecedents 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 abscond or flee from justice or 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.

In view of the aforesaid facts and circumstances of the case, this Court deems fit and proper to grant bail to the petitioner. 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.

29.09.2022

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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