

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

228

CRM-M-54482 of 2022

Date of Decision:21.12.2022

Gulshan Singh

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Balwinder Singh, Advocate,
for the petitioner.

Mr. Jashandeep Singh, AAG, Punjab

JASGURPREET SINGH PURI, J. (Oral)

This second petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.119 dated 16.08.2021, under Section 21/61/85 of the NDPS Act, registered at Police Station Khuian Sarwar, District Fazilka.

It has been submitted by the learned counsel for the petitioner that earlier the petitioner had filed a bail petition before this Court which was dismissed vide Annexure P-9 in CRM-M-54407 of 2021 on 08.08.2022. While referring to the aforesaid order, he submitted that the learned State counsel had submitted on the basis of instructions from the DSP Sukhwinder Singh Brar that although no prosecution witness had been examined at that point of time but two official witnesses were bound down for 18.08.2022 and there were only 07 cited

witnesses in the present case and he had also submitted that all the prosecution witnesses shall be examined within a period of two months. He submitted that thereafter on 18.08.2022 the two official witnesses who were bound down were examined and there is no dispute with regard to the same but it has been wrongly stated before this Court that there are total 7 cited prosecution witnesses but there are actually 08 cited witnesses and secondly after 18.08.2022 only two prosecution witnesses have been examined and now four more prosecution witnesses left and the prosecution witnesses have not been examined within a period of two months as stated by the learned State counsel on instructions and therefore the petitioner is entitled for the grant of regular bail.

On the other hand, Mr. Jashandeep Singh, learned AAG, Punjab has stated, on instructions from the DSP Sukhwinder Singh Brar who is present in Court, that after the passing of the earlier order on 08.08.2022 whereby the bail petition was dismissed two official witnesses who were bound down for 18.08.2022 were examined on that date and thereafter two more witnesses have been examined and now there are four remaining prosecution witnesses but the learned trial Court has adjourned the case for 07.02.2023 and therefore that itself cannot become a ground for maintaining a successive bail petition which was earlier dismissed on merits. He submitted that so far as the mistake with regard to total number of witnesses i.e. instead of 08 cited prosecution witnesses it was stated to be 07 cited prosecution witnesses, also cannot become a ground for grant of bail to the petitioner especially in the light of the fact that earlier the bail petition of the present petitioner was dismissed on merits and the prayer of the petitioner for grant of regular bail is barred by Section 37 of the NDPS Act. He

again submitted on instructions that the remaining witnesses have been summoned for 07.02.2023 and every endeavour shall be made that those witnesses will be present in the Court on the next date of hearing fixed by the trial Court so that all the prosecution witnesses get examined on that date.

Learned State counsel further submitted that it is a case where there has been a huge recovery of 10000 intoxicant tablets of Tramadol from the petitioner and another 10000 tablets of Tramadol from the other co-accused, totaling 20000 tablets and the petitioner was apprehended on the spot and all the arguments which had been raised by the learned counsel for the petitioner had been dealt in detail by this Court while dismissing his earlier bail petition. He submitted that the prayer of the petitioner is barred by the bar contained under Section 37 of the NDPS Act and the petitioner has not been able to make out any ground for making a departure from the aforesaid bar and therefore, the petitioner is not entitled for the concession of regular bail.

I have heard the learned counsel for the parties.

In the earlier bail petition filed by the petitioner, a stand was taken by the learned State counsel that although no prosecution witness has been examined but the two official witnesses were bound down for 18.08.2022 and as per the learned counsel for the parties, they have been examined. So far as the mistake with regard to stating that total 7 cited prosecution witnesses are there but in fact there are 8 cited witnesses in the present case is concerned, it cannot itself become a ground for grant of bail. Although on 08.08.2022 when the earlier bail petition was dismissed by this Court, learned State counsel had submitted that all the prosecution witnesses will be examined within a period of two months but in fact four witnesses have been examined till date. The mere fact that the remaining four

witnesses are still not examined but now as per the learned counsel for the State, they have been summoned and as per his instructions from the DSP, endeavour shall be made to examine those remaining four witnesses itself cannot become a ground which may vest a right upon the petitioner for grant of bail in view of the bar contained under Section 37 of the NDPS Act.

A perusal of the zimni orders passed by the learned trial Court which have been produced by the learned counsel for the petitioner after the dismissal of the earlier bail petition and also the statement made by the learned State counsel on instructions from the DSP would show that it does not lack any bonafide.

Be that as it may, allegedly there had been a huge recovery from the petitioner and the co-accused totaling 20000 tablets of Tramadol. The petitioner has still not been able to show any ground for making a departure from the bar contained under Section 37 of the NDPS Act.

Consequently, finding no merit in the present petition, the same is hereby dismissed.

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.

(JASGURPREET SINGH PURI)
JUDGE

December 21, 2022
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No