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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-3939-2023 (O&M)
Date of Decision: 18.08.2023

Gurdeep Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Anil Mehta, Advocate,
for the petitioner

Mr. Sarabjit Singh Cheema, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

1. 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.144 dated 29.10.2020, under Sections 21, 21-C, 25, 27, 27-A & 29 of the NDPS Act, registered at Police Station STF, Phase-IV, Mohali, District SAS Nagar (Area P.S. Sahnewal, Ludhiana).
2. Learned counsel for the petitioner has submitted that the petitioner is in custody for more than 2 years and 8 months. He further submitted that the petitioner has been falsely implicated in the present case and it is a case where as per the allegations contained in the FIR, there was total confiscation of 31 kgs. and 418 grams of *Heroin* plus 6 kgs. of *ICE (Amphetamin)* and 2 kgs. of other chemical. He also submitted that the aforesaid quantity of 31 kgs. of *Heroin*+6 kgs. of *ICE (Amphetamin)*+2 kgs.

of other chemical was not effected from the present petitioner and it was effected from the other co-accused, namely, Manjit Singh and so far as the present petitioner is concerned, his name was nominated on the basis of the disclosure statement of the aforesaid co-accused, namely, Manjit Singh and the statement of a co-accused is not admissible in evidence *per se*, therefore, the petitioner may be considered for the grant of regular bail. He further submitted that there are total 67 cited witnesses and none has been examined till date. He also submitted that the petitioner was earlier arrested in one more FIR and his own confessional statement was recorded in that FIR which does not find mention with regard to the present recovery and therefore, the petitioner has been falsely implicated in the present case. He submitted that the petitioner is involved in two more cases under the NDPS but out of those two cases, he has already been acquitted in one case and in another case he is pending trial but he is not on bail. He further submitted that in view of the aforesaid facts and circumstances and considering the custody of the petitioner, he may be considered for the grant of regular bail.

3. On the other hand, Mr. Sarabjit Singh Cheema, learned DAG, Punjab on instructions has submitted that it is a case where there are total 19 accused and out of which, only 14 accused have been arrested and one accused has been declared as proclaimed offender. He further submitted that it is the case where all the accused had formed a syndicate and with the co-operation of all these accused persons, there was a large scale trading of *Heroin* and *ICE* etc. He also submitted that there was a huge recovery of 31 kgs. and 418 grams of *Heroin* in total in the present case, although from the co-accused along with 6 kgs of *ICE* and 2 kgs. of other chemical and even if

the large quantity was not recovered from the conscious possession of the petitioner, but in the present case, there was a recovery of 418 grams of *Heroin* from Innova Car, which was in the name of the present petitioner. He further submitted that even the aforesaid quantity of 418 grams of *Heroin*, falls in the category of commercial quantity and even qua the present petitioner, his prayer is hit by the bar contained under Section 37 of the NDPS Act. He also submitted that the present petitioner is involved in two more cases and even if he has been acquitted in one of the NDPS cases, but in another NDPS case, he is under trial. He further submitted that considering the large quantity recovered in total and 418 grams of *Heroin* recovered from the present petitioner which falls in the category commercial quantity under the NDPS Act and considering the gravity of offence where a syndicate was being operated with active involvement of the petitioner, the petitioner does not deserve the concession of regular bail, even if his custody has now come out to be more than 2 years and 8 months. He also submitted that the reason as to why there has been a delay in the trial was that some of the accused were absconding and initially the charges were framed in the year 2022, but thereafter on filing of the supplementary challan, now fresh charges were framed in the month of April, 2023 and although no prosecution witness has been examined till date but it was not because of the delay on the part of the prosecution, but because of the fact that a large number of accused were involved and that was the reason as to why till date, no prosecution witness has been examined. He further submitted that now endeavour will be made by the prosecution to examine the witnesses as early as possible.

4. I have heard the learned counsels for the parties.

5. The present is a case where the petitioner was nominated on the basis of disclosure statement made by co-accused, namely, Manjit Singh from whom there was a huge recovery and the total recovery in the present case comes out to be 31 kgs. and 418 grams of *Heroin* in total, 6 kgs of *ICE* and 2 kgs. of chemical. Out of the total recovery as aforesaid, the recovery from present petitioner was 418 grams of *Heroin*, which falls in the category of commercial quantity. The petitioner is stated to be involved in two more cases under the NDPS Act and out of the two cases, as per the learned counsel for the petitioner, the petitioner already stands acquitted in one case.

6. Learned counsel for the petitioner has stated that considering the long custody of the petitioner, he may be considered for the grant of regular bail. However, this Court is of the view that although long custody is a relevant factor for grant of regular bail, but considering the over all gravity and magnitude of the present offence, whereby in the present case, there are total 19 accused and according to the learned counsel for the State, they formed a syndicate for drug smuggling and the total recovery was so high in the present case that the gravity and magnitude of the offence would disentitle the petitioner for being granted regular bail. Apart from the above, no ground has been made out by the learned counsel for the petitioner for making a departure from the bar contained under Section 37 of the NDPS Act. Therefore, this Court does not deem it fit and proper to grant bail to the petitioner.

7. Consequently, the present petition is, hereby, dismissed.

8. 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.

18.08.2023
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

1. Whether speaking/reasoned:

Yes/No

2. Whether reportable:

Yes/No