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

CRM-M-3824-2023 (O&M)

Date of Decision: 04.05.2023

Ravi Singh @ Happy Randhawa @ Allu

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Monty Goyal, Advocate,
for the petitioner.

Mr. Arun William, AAG, 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, 27-A & 29 of the N.D.P.S. Act, 1985 (Sections 25, 27, 29 of the NDPS Act were added later on), registered at Police Station STF, Phase IV, Mohali, District SAS Nagar.

2. It has been submitted by learned counsel for the petitioner that it is a case where the petitioner is in custody from last 2 years, 4 months and 18 days and after the investigation of the case, the charges were framed on 05.01.2022 initially and thereafter, fresh charges have been framed on 27.04.2023 and till date, no prosecution witness has been examined at all. He further submitted that it is a case where the petitioner has been in fact falsely implicated which is clear from the fact that the present FIR is of the

date of 29.10.2020, in which, allegations have been made that the petitioner along with the other co-accused were dealing with *Heroin* and other contraband, but in fact the petitioner does not reside in India and he is residing in Thailand for his job. He referred to Annexure P-2 which is a photocopy of the passport of the petitioner to show that he departed from India on 1st February/31st March, 2020 to Thailand and he came back on 12.12.2020 and when he came back, he was arrested on 13.12.2020 whereas the FIR is of the month of October, 2020.

3. Learned counsel for the petitioner further submitted that the petitioner is having clean antecedents and is not involved in any other case and rather this Court had directed the State to file an affidavit with regard to the role of the petitioner and now when an affidavit has been filed by the DSP, Special Task Force, Ludhiana, nothing is mentioned with regard to the absence of the petitioner for long time and since he was not even present in India, the allegations against the petitioner are totally false and he was falsely implicated in the present case. Learned counsel further submitted that there had been alleged recovery from various other co-accused although to a large extent, but so far as the role of the petitioner is concerned, even as per the affidavit filed by the DSP, it was based upon the confessional statement made by the petitioner before the Police Officer which is not admissible in evidence. He also submitted that although in the affidavit it has been so stated that the confessional statement was made under Section 27 of the Evidence Act but on the basis of the statement, there has been no recovery, and therefore, the statement, if any, could not be under Section 27 but it would only be under Section 25 of the Evidence Act, which would be not

admissible in evidence and the only allegation against the petitioner was that he along with the other co-accused used to manufacture intoxicant by mixing *Heroin* and other chemicals in a rented house and used to sell it whereas the petitioner does not even reside in India and was not even present in India as aforesaid. He further submitted that the other co-accused, namely, Avninder Singh @ Shanty has also been extended the benefit of regular bail by a Co-ordinate Bench of this Court in CRM-M-14138-2021 on 07.04.2021 vide Annexure P-3. He submitted that in view of the peculiar facts and circumstances of the case and considering the long custody of the petitioner, he may be considered for the grant of regular bail.

4. On the other hand, Mr. Arun William, learned AAG, Punjab, while referring to the affidavit file by the DSP, submitted that it is correct that the petitioner has faced incarceration for 2 years, 4 months and 18 days and he is having clean antecedents and is not involved in any other case. He further submitted that so far as the role of the petitioner in the present case is concerned, he along with the co-accused used to manufacture intoxicant by mixing *Heroin* and other chemicals in a rented house and used to sell it and that was the only role attributed to the petitioner.

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

6. It is a case where the petitioner has faced incarceration for 2 years, 4 months and 18 days and no prosecution witness has been examined till date, although the charges were framed firstly on 05.01.2022 and thereafter, fresh charges were framed on 27.04.2023. The petitioner is stated to be not involved in any other case. The recovery from the co-accused is indeed large and falls in the category of commercial quantity under the

NDPS Act but so far as the role of the present petitioner is concerned, it has to be seen in the context of allegations made in the FIR and also the affidavit filed by the DSP before this Court. Even as per the FIR, there was no recovery effected from the petitioner and the learned counsel for the petitioner has referred to Annexure P-2 whereby, the petitioner had rather departed from India to Thailand in the month of February/March, 2020 and the FIR in the present case was registered in the month of October, 2020 and the petitioner came back to India on 12.12.2020 and was arrested on 13.12.2020. In the affidavit filed by the DSP, nothing has been stated with regard to the aforesaid submission made by the learned counsel for the petitioner pertaining to the absence of the petitioner from India for a long period of time.

7. After hearing the learned counsels for the parties and considering the aforesaid facts and circumstances, especially the photocopy of the passport which has been attached by the petitioner and only for the purpose of considering his prayer for grant of regular bail, this Court is of the view that the petitioner deserves the concession of bail. The first ingredient for making a departure from the bar contained under Section 37 of the NDPS Act will remain satisfied in view of Annexure P-2. So far as the second ingredient for making a departure from the aforesaid bar is concerned, both the learned counsel for the parties have stated that the petitioner is not involved in any other case and he does not have any criminal antecedents nor it is the case of the learned State counsel that in case the petitioner is released on regular bail then he may repeat the offence or may abscond or flee from justice, and therefore, even the second

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ingredient for making a departure from the bar contained under Section 37 of the NDPS Act remains satisfied.

8. In view of the aforesaid position and considering the long custody of the petitioner which is 2 years, 4 months and 18 days and the petitioner is having clean antecedents, this Court deems it fit and proper to grant regular bail to the petitioner especially in the light of Article 21 of the Constitution of India.

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

10. 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.

04.05.2023
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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