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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-7128-2023
Date of decision: 06.11.2023

KRISHAN SINGH

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Damanjit Singh Sandhu, Advocate
for the petitioner.

Mr. Harsimar Singh Sitta, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present 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.113 dated 24.09.2022, under Section 22 of the NDPS Act, registered at Police Station Lakho Ke Behram, District Ferozepur, Punjab.

2. Mr. Damanjit Singh Sandhu, Advocate has put in appearance on behalf of the petitioner and has filed his power of attorney in Court today and the same is taken on record.

3. Learned counsel for the petitioner submitted that the petitioner is in custody from 24.09.2022, which is more than 1 year and 1 month and charges in the present case were framed on 08.05.2023 but not even a single prosecution witness has been examined till date. He further submitted that the petitioner has clean antecedents and he is not involved in any other case but has been falsely implicated by the police in the present case. He further submitted that as per the

FIR itself, the police spotted the petitioner who was riding a motorcycle and on seeing the police party he became nervous and tried to turn his motorcycle, which slipped and he fell down on the road and as a result, a polythene bag which he was carrying was torn and some tablets fell down on the ground. He also submitted that the allegations in the FIR itself appear to be stereotyped allegations which is a normal practice by the police to falsely implicate any person. He further submitted that even as per the prosecution, no recovery has been effected from the person of the petitioner but from the ground. He further submitted that the petitioner has clean antecedents and is not involved in any other case and no recovery being effected from the person of the petitioner, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner even if the alleged recovery was of 990 intoxicant tablets of *Tramadol Hydrochloride*.

4. On the other hand, Mr. Harsimar Singh Sitta, DAG, Punjab submitted that it is correct that the petitioner is in custody from 24.09.2022, which is more than 1 year and 1 month. He further submitted that there was an alleged recovery of 990 intoxicant tablets from the ground when on seeing the police party the petitioner fell on the ground and a polythene bag which he was carrying was torn and the aforesaid intoxicant tablets were recovered. He also submitted that it is correct that the petitioner has clean antecedents and he is not involved in any other case.

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

6. The petitioner has already faced incarceration for more than 1 year and 1 month and he is not involved in any other case as per the learned counsel for the parties. Although the recovery in the present case is found to be 990

intoxicant tablets of *Tramadol Hydrochloride* but even as per the FIR and the prosecution, the aforesaid tablets were recovered from the ground and not from the person of the petitioner but as per the allegations, the petitioner was on a motorcycle and a polythene bag was tied on the handle of the said motorcycle. Even as per the learned counsel for the parties, there was no recovery from the person of the petitioner.

7. This Court is of the view that considering the aforesaid totality and circumstances of the present case and also considering the custody of the petitioner and the fact that he has clean antecedents and is not involved in any other case, the petitioner deserves the concession of regular bail because the bar contained under Section 37 of the NDPS Act will not apply to the petitioner in the present case as there was no recovery from the person of the petitioner. Furthermore, it is not the case of the learned State counsel that in case the petitioner is released on bail, then he may influence any witness or may tamper with evidence or may flee from justice.

8. Consequently, the present petition is allowed. The petitioner shall be released on regular bail, if not required in any other case, subject to furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

9. However, anything observed hereinabove shall not be treated as an expression of opinion on the merits of the case and is meant for the purpose of deciding the present petition only.

06.11.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No