

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-13504-2023 (O&M)

Date of Decision: 28.04.2023

Darshan Singh @ Dassa

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. A.K. Khubbar, 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 FIR No. 17 dated 31.01.2021, under Sections 22-25-61-85 of NDPS Act, registered at Police Station Sardulgarh, District Mansa.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody for 2 years and 3 months and the charges in the present case were framed on 04.02.2022. He submitted that more than 1 year has elapsed after the framing of the charges but no prosecution witness has been examined till date. He submitted that it is a case where the petitioner is having clean antecedents and he is not involved in any other case and was falsely implicated in the present case only on the ground that he was a pillion rider and as per the allegations, he was holding a bag from

where there was alleged recovery of 855 tablets of Tramadol. He submitted that in fact the false implication was based upon political enmity and the other co-accused who was driving the motorcycle namely Satpal Singh @ Satta who is at parity with the petitioner has been extended the benefit of regular bail by this Court in CRM-M-59343-2022 on 21.03.2023 on the ground that after the framing of the charges no single witness has been examined and now even more than 1 month has elapsed after the grant of bail by this Court as aforesaid, still no prosecution witness has been examined. He submitted that since the petitioner is at parity with the aforesaid co-accused namely Satpal Singh @ Satta, he may be considered for the grant of regular bail.

3. On the other hand, Mr. Arun William, learned AAG, Punjab has submitted that it is correct that the petitioner is in custody for 2 years and 3 months but till date no prosecution witness has been examined. He further submitted on instructions from ASI Hardev Singh that there is no other case against the petitioner. The parity with the other co-accused has also not been disputed.

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

5. The petitioner has faced incarceration for 2 years and 3 months. The charges were framed on 04.02.2022 but no prosecution witness has been examined till date. The petitioner is not involved in any other case and has got clean antecedents. The other co-accused namely Satpal Singh @ Satta has already been extended the benefit of regular bail by considering the fact that more than 1 year has elapsed after the framing of the charges, no prosecution witness has been examined and in view of the judgment of the

Hon'ble Supreme Court in *Satender Kumar Antil Versus Central Bureau of Investigation and another [2022 (10) SCC 51]* and in the light of Article 21 of the Constitution of India, the bar contained under Section 37 of the NDPS Act would not apply. Therefore in the present case also rather after the grant of bail to the other co-accused even again one month has elapsed but no prosecution witness has been examined. Even recently the Hon'ble Supreme Court in *Mohd. Muslim @ Hussain Versus State (NCT of Delhi) [Criminal Appeal No.943 of 2023]* also observed that the bar contained under Section 37 of the NDPS Act is to be considered in the light of long custody in a given facts and circumstances of any case.

6. The other co-accused who is stated to be parity with the present petitioner has already been extended the benefit of bail by this Court after considering the bar contained under Section 37 of the NDPS Act, therefore the present petitioner will also be entitled for the grant of regular bail.

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

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

28.04.2023

rakesh

(JASGURPREET SINGH PURI)

JUDGE

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