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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-13054-2023 (O&M)
Date of Decision: 22.11.2023

Ishwar Gautam @ Jhunda Baba

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ivneet Singh Pabla, Advocate,
for the petitioner.

Mr. Naveen Kumar Sheoran, DAG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.82 dated 04.02.2022, under Section 20 of the NDPS Act, registered at Police Station Gohana City, District Sonapat.

2. It has been submitted by learned counsel for the petitioner that petitioner is 72 years old man and suffering from various ailments and further submitted that he has already faced incarceration for 1 year and 10 months and only 3 prosecution witnesses have been examined till date. He submitted that the allegations against the petitioner are pertaining to alleged recovery of 1 kg. and 475 grams of *Charas* which is marginally higher than the commercial quantity as defined under the NDPS Act. He further submitted that the primary reason as to why he has been falsely implicated

in the present case is that the petitioner was earlier involved in 3 more cases out of which 2 cases are pertaining to NDPS Act and due to enmity with the petitioner, the police falsely implicated him. He also submitted that now the petitioner has been acquitted in all the aforesaid 3 cases and the custody of the petitioner is about 1 year and 10 months and considering the aforesaid facts and circumstances, he may be considered for grant of regular bail.

3. On the other hand, Mr. Naveen Kumar Sheoran, DAG, Haryana submitted that so far as the custody of the petitioner is concerned, the same is correct but the recovery from the petitioner falls in the category of commercial quantity under the NDPS Act, and therefore, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act. He further submitted that it is also correct that the petitioner has since been acquitted in the other cases.

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

5. The petitioner is stated to be an old man of 72 years and as per the learned counsel for the petitioner, he is suffering from various complications of medical ailments. He was stated to be involved in two more cases under the NDPS Act and one case under the Excise Act and as per the learned counsels for the parties, he has since been acquitted in all the cases. The custody of the petitioner is now 1 year and 10 months and there has been an alleged recovery of 1 kg. and 475 grams of *Charas* from the petitioner which was marginally higher than the commercial quantity of *Charas*. Therefore, this Court is of the view that considering the aforesaid age of the petitioner, his medical ailments as stated by the learned counsel for the petitioner and his custody which is 1 year and 10 months and the fact

that only 3 witnesses have been examined as of date, the bar contained in Section 37 of the NDPS Act will not apply to the petitioner in the light of Article 21 of the Constitution of India.

6. 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.

7. 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.

22.11.2023

Bhumika

(JASGURPREET SINGH PURI)

JUDGE

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