

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

CRM-M-13038-2023 (O&M)

Date of Decision: 21.08.2023

Jaswinder Singh @ Sunny @ Soni

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. P.S. Sekhon, Advocate, for the petitioner.

Mr. Ramdeep Partap Singh, Senior DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No.54 dated 24.06.2022, under Sections 22 and 29 of NDPS Act, registered at Police Station City Ahmedgarh, District Malerkotal (earlier District Sangrur).

2. Learned counsel for the petitioner has submitted that the petitioner is in custody from 28.08.2022 which is almost one year. He submitted that there was no recovery effected from the petitioner and the recovery in the present case was effected from the other co-accused namely Vidya Devi from whom there was alleged recovery of 1000 tablets of diphenoxylate Hydrochloride. He further submitted that the petitioner was already in custody in some other cases and the allegations against the petitioner were in the aid of Section 29 of the NDPS Act that he had supplied the contraband to the aforesaid co-accused Vidya Devi. He further submitted that the petitioner is already in the jail could not have supplied any contraband and he has been

falsely implicated on the basis of disclosure statement of a co-accused as a cover up operation only because he was earlier involved in other NDPS cases. He further submitted that since there was no recovery effected from the petitioner and the petitioner was already in custody, he may be considered for the grant of regular bail because the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner.

3. On the other hand, Mr. Ramdeep Partap Singh, Senior DAG, Punjab has submitted that it is correct that the petitioner is in custody from 28.08.2022 which is almost 1 year but no prosecution witness has been examined till date. He submitted that it is also correct that no recovery was effected from the petitioner but as per the disclosure statement, the petitioner was a supplier of tablets to the aforesaid co-accused Vidya Devi from whom the aforesaid tablets were confiscated. He submitted that in view of the fact that the petitioner is involved in number of other cases under the NDPS Act, the petitioner is not entitled for the grant of regular bail.

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

5. It is a case where the petitioner has already faced incarceration for 1 year and as per the learned counsel for the parties, there was no recovery effected from the petitioner and he was nominated on the basis of disclosure statement of a co-accused in the aid of Section 29 of the NDPS Act. The petitioner was stated to be already in custody in some other cases. On a query being raised to the learned State counsel as to whether there is any other sufficient material available with the prosecution except for the disclosure statement of a co-accused to which he submitted that in the challan there was no such material available except for the disclosure statement. After hearing the learned counsel for the parties, this Court is of the view that the name of the

petitioner has been nominated on the basis of disclosure statement of a co-

accused which is per se not admissible in evidence and in the absence of any other corroborating evidence, the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner especially in view of the fact that no recovery was effected from the petitioner and therefore, the petitioner is entitled for the grant of regular bail in the light of 21 of the Constitution of India.

6. 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.

7. 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.

21.08.2023

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)

JUDGE

: Yes/No
: Yes/No