

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-15388 of 2023

Date of Decision:10.04.2023

Kailash Labana

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Raj Karan Singh Verka, Advocate,
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab

JASGURPREET SINGH PURI, J. (Oral)

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.57 dated 07.04.2019, under Section 20 of the NDPS Act, 1985, registered at Police Station Bhogpur, District Jalandhar.

Learned counsel for the petitioner submitted that the petitioner is in custody from 07.04.2019 which is four years time and till date even charges have not been framed by the learned trial Court. He submitted that although there was an allegation of recovery of 4 kgs. of charas from the petitioner and 4 kgs. of charas from the other co-accused but it was a case which was planted upon the petitioner and therefore the petitioner is entitled for the grant of regular bail on that ground as well. He submitted that although the petitioner is involved in one more case under the NDPS Act which is in the State of Gujarat but so far as the present

case is concerned, since he has already faced incarceration for four years and even the charges have not been framed till date, he may be considered for the grant of regular bail. He further referred to Annexure P-3 whereby the other co-accused namely Jaipal Singh @ Jaypal Singh Devsing Nakyada has been extended the benefit of bail by this Court on similar grounds and the present petitioner is also at parity with the aforesaid co-accused.

On the other hand, Ms. Akshita Chauhan, learned DAG, Punjab has submitted that it is correct that the petitioner has faced incarceration for four years and till date charges in the present case have not been framed and it is also correct that the other similarly situated co-accused has been granted regular bail by this Court vide Annexure P-3. She has however opposed the grant of bail to the petitioner on the ground that the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

I have heard learned counsel for the parties.

The petitioner has already faced incarceration for four years and till date charges have not been framed by learned trial Court. The other co-accused namely Jaipal Singh @ Jaypal Singh Devsing Nakyada who is stated to be at parity with the present petitioner has been extended the benefit of bail by this Court on 30.11.2022 vide Annexure P-3. The pendency of other case against the petitioner under the NDPS Act would not become a bar for grant of bail to the petitioner in the present case. So far as the provisions of Section 37 of the NDPS Act are concerned, the facts of the present case suggest that the incarceration of the petitioner is of four years and even charges have not been framed and therefore this Court has *prima facie* reasons to believe, at least at this stage, for the purpose

of considering the prayer of the petitioner for grant of regular bail that the petitioner is not guilty of an offence. In the facts and circumstances of the present case, the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner especially in the light of Article 21 of the Constitution of India and the judgment of the Hon'ble Supreme Court in Satender Kumar Antil v. Central Bureau of Investigation and another 2022 (10) SCC 51.

In ivew of the above, 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.

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 the present petition.

(JASGURPREET SINGH PURI)
JUDGE

April 10, 2023

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