

CRM-M-18441-2023 (O&M)

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2023:PHHC:087415

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-18441-2023 (O&M)

Date of Decision: 13.07.2023

Pitar Chand

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Paramjit Singh Jammu, Advocate for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a third petition filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case FIR No. 414 dated 19.11.2021, under Section 22 of the NDPS Act, 1985, registered at Police Station City Dabwali, District Sirsa.

2. Learned counsel for the petitioner submitted that the petitioner is in custody since 19.11.2021 which is about 1 year and 8 months. The charges were framed on 04.06.2022 and only one witness has been examined and that too in part since the cross-examination has not been completed and has been deferred. He submitted that in the present case there was alleged recovery of 4000 tablets of Tramadol from the petitioner and the other co-accused but the present case was planted upon the petitioner. He further submitted that in fact at the time of the trial, the petitioner had moved an

application before the trial Court for the preservation of the CDR and the

mobile tower locations of the police officials but the same was dismissed by the learned trial Court but on a petition filed before this Court in CRM-M-12522-2023, the same was allowed and it was directed that the call details etc. in the CDRs should be preserved. He also submitted that there are material discrepancies in the police proceedings which are contained in the FIR wherein the trade name of the confiscated tablets has been stated to be Akumentis Health Care Ltd., whereas as per the FSL Report, it has been stated to be the trade name of Pure and Cure Health Care Private Limited and there is a discrepancy with regard to the weight also. He submitted that it is a case of false implication and, therefore, the petitioner may be considered for grant of regular bail.

3. On the other hand, Mr. Vishal Kashyap, DAG, Haryana has submitted that although the petitioner is in custody for 1 year and 8 months but it is a case where there had been a huge recovery of 4000 tablets of Tramadol from the petitioner and the other co-accused. He submitted that the procedure prescribed under Section 50 of the NDPS Act was duly complied with and it is not a case that the trial has been delayed at behest of the prosecution witnesses since the charges in the present case were framed on 04.06.2022 and thereafter, the material witness namely Balwant Rai was examined on 03.10.2022 and on the same date, he was cross-examined by the defence counsel but it was thereafter on the basis of request made by the learned defence counsel, the trial Court had deferred the cross-examination. In the meantime, the petitioner filed two applications and due to the pendency of the aforesaid applications, he was not further cross-examined and, therefore, it cannot be said that the delay has been caused because of the prosecution. He submitted that so far as the discrepancy with regard to trade name is concerned, the same is a question of fact which can be seen by

way of adducing evidence at the time of trial but at the same time, the batch number of the confiscated tablets duly match with each other. The batch number which has been so stated in the proceedings after the FIR, proceedings before the Magistrate under Section 52-A of the NDPS Act and the FSL Report are the same and they match with each other. He submitted that so far as the discrepancy in the weight is concerned, the same is also a factual aspect which can be seen only at the time of trial and it itself cannot become a ground of grant of bail considering the bar contained under Section 37 of the NDPS Act. He submitted that the petitioner has not been able to make out any ground for making a departure from the aforesaid bar.

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

5. The petitioner is in custody for 1 year and 8 months. The charges were framed on 04.06.2022 and thereafter, the recovery witness was examined, although in part since his cross-examination was deferred. As per the learned counsel for the parties, the petitioner had filed application before the trial Court and his cross-examination stands deferred till date. Learned counsel for the petitioner has raised some questions of fact pertaining to the name of the manufacture as mentioned in the confiscated quantity but at the same time learned State counsel has also submitted that the batch number which has been so stated in the proceedings after the FIR, proceedings before the Magistrate under Section 52-A of the NDPS Act and the Forensic Laboratory Report are the same. Therefore, this Court would not go into the disputed question of fact which can be seen only at the time of adducing evidence at the time of trial. The confiscated quantity as per the prosecution from the petitioner is very huge. It is 4000 tablets of Tramadol which was confiscated from the petitioner along with the other co-accused and it falls

counsel for the petitioner has not been able to make out any case for making a departure from the bar contained under Section 37 of the NDPS Act.

6. Consequently, findings no merit in the present petition, the same is hereby dismissed.

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.

(JASGURPREET SINGH PURI)
JUDGE

July 13, 2023

Rajeev (rvs)

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No