

CRM-M-17680-2023

217

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-17680-2023
Date of Decision: 21.04.2023

Amrik Singh Petitioner

Versus

State of Punjab Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sandeep Verma, Advocate,
for the petitioner.

Mr. Arun William, AAG, 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 case bearing FIR No.161 dated 19.08.2019, under Section 22 of the N.D.P.S. Act, 1985, registered at Police Station Sadar Samana, District Patiala.

It has been submitted by learned counsel for the petitioner that it is a case where the petitioner is in custody since 19.08.2019, which is for 3 years and 8 months and the petitioner is not involved in any other case and has got clean antecedents. He further submitted that as per the allegations there was an alleged recovery of 6600 tablets consisting the salt of *Alphrazolam* 0.5 mg. each and 1800 tablets of *Clovidol-100* consisting the salt of *Tramadol Hydrochloride* from three persons including the present petitioner, who were allegedly riding the motorcycle. He further submitted that two persons, namely, Angrej Singh and Maycal Singh have already been extended the benefit of regular bail by this Court vide Annexures P-3 & P-4.

He also submitted that although one of the earlier bail petition filed by the petitioner was dismissed by this Court on merits on 05.09.2022 but the present successive bail petition will certainly maintainable in view of the fact and circumstances. He further submitted that the aforesaid bail petition of the present petitioner was dismissed on the ground that the quantity involved was of commercial quantity and there was no ground available with the petitioner for making a departure from the bar contained under Section 37 of the NDPS Act and rather this Court had directed the learned trial Court to expedite the trial and to conclude the same as expeditiously as possible. He also submitted that almost more than 7 months have elapsed that the trial has not been concluded and only 5 witnesses have been examined till date. He further submitted that now in view of the recent judgment of the Hon'ble Supreme Court passed in *Criminal Appeal No.943 of 2023* titled as "*Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)*" decided on 28.03.2023 wherein the effect of delay in trial upon the bar contained under Section 37 of the NDPS Act has been discussed in detail, and therefore, in view of the aforesaid judgment of the Hon'ble Supreme Court, the petitioner may be considered for the grant of regular bail.

On the other hand, Mr. Arun William, learned AAG, Punjab has stated that it is correct that the petitioner has faced incarceration for 3 years and 8 months and now 5 witnesses have been examined. He has however opposed the grant of regular bail to the petitioner on the ground that the recovered quantity from the petitioner and the other co-accused was 6600 tablets consisting the salt of *Alphrazolam* 0.5 mg. and 1800 tablets of *Clovidol-100* consisting the salt of *Tramadol Hydrochloride* which falls in the

category of commercial quantity, and therefore, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act. He further submitted that so far as the grant of regular bail to the other co-accused, who are at parity with the present petitioner, is concerned, he has not disputed the same since the bail orders have already been attached along with the present petition.

I have heard the learned counsel for the parties.

The petitioner has faced incarceration for 3 years and 8 months as he is in custody since 19.08.2019. The charges in the present case were framed on 11.02.2020 and when the petitioner had filed the earlier bail petition before this Court, the same was dismissed on 05.09.2022 whereby a direction was issued to the learned trial Court to expedite the trial and to conclude the same as expeditiously as possible and in accordance with law. However, learned counsel for the parties have informed that at that point of time only 2 witnesses were examined when the earlier bail petition was dismissed and now 5 witnesses have been examined and 3 witnesses are remaining. The other two co-accused have already been extended the regular bail by this Court. When the earlier bail petition of the petitioner was dismissed by this Court on 05.09.2022, this Court had considered the issue of bar contained under Section 37 of the NDPS Act in view of the quantity of contraband recovered from the petitioner and the other co-accused, but the learned counsel for the petitioner has relied upon a recent judgment of the Hon'ble Supreme Court in *Mohd. Muslim @ Hussain's case (supra)* to contend that when there is undue long delay in the trial resulting into long custody of an accused then the bar contained under Section 37 of the NDPS

Act gets diluted and it may not apply in a given facts and circumstances of the case.

After hearing the learned counsel for the parties, this Court is of the view that the ratio of the aforesaid judgment will apply in the present case considering the peculiar facts and circumstances where the total custody of the petitioner has come out to be 3 years and 8 months which is indeed long custody. Apart from the above, this Court more than 7 months ago directed the trial Court to expedite the trial and to conclude the trial as expeditiously as possible but the same has not been concluded till date and as per the learned counsel for the parties, only 5 witnesses have been examined till date. Therefore, considering the totality of the circumstances of the present case, this Court deems it fit and proper to grant regular bail to the petitioner especially in the light of long custody of the petitioner and Article 21 of the Constitution of India.

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.

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.

21.04.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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