

215

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-17774-2023
Date of decision: 28.08.2023

RAGHUBIR

...Petitioner

VERSUS

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. R. S. Mamli, Advocate
for the petitioner.

Mr. Naveen Kumar Sheoran, DAG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a third petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.162 dated 03.05.2020, under Sections 188 and 269 of the IPC, Sections 21(b), 21(c) and 27-A of the NDPS Act and Section 51-B of Disaster Management Act, 2005, registered at Police Station Sadar Fatehabad, District Fatehabad, Haryana.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody from 03.05.2020, which is more than 3 years and 3 months. He further submitted that the petitioner has no criminal background and he is not involved in any other case and the petitioner has been falsely implicated by the police in the present case. He further submitted that as per the allegations, the

petitioner along with the other two co-accused were coming in a canter and the police party intercepted the canter and there was recovery of 256 grams of *heroin* from the petitioner, 268 grams of *heroin* from other co-accused, namely, Vijay and 164 grams of *heroin* from third co-accused, namely, Rakesh alias Kalu Ram. He further submitted that the aforesaid co-accused, namely, Vijay has already been extended the benefit of regular bail by a Co-ordinate Bench of this Court in CRM-M-1843-2023 on 26.05.2023. He referred to the judgments of Hon'ble Supreme Court in *Special Leave to Appeal (Criminal) No.4169 of 2023* titled as *"Rabi Prakash versus The State of Odisha"* and *Special Leave to Appeal (Criminal) No.6690 of 2022* titled as *"Dheeraj Kumar Shukla versus The State of Uttar Pradesh"* to contend that prolonged incarceration itself is a ground for grant of bail notwithstanding the bar contained under Section 37 of the NDPS Act. He further submitted that the petitioner has no criminal background and only 4 prosecution witnesses have been examined till date out of total 16 cited witnesses and the trial of the case may take long time to conclude and therefore the petitioner may be considered for grant of regular bail.

3. On the other hand, Mr. Naveen Kumar Sheoran, DAG, Haryana has submitted that it is correct that the petitioner is in custody from 03.05.2020, which is more than 3 years and 3 months and only 4 prosecution witnesses have been examined till date out of total 16 cited witnesses. He further submitted that so far as the present petitioner is concerned, the petitioner has no criminal background and he is not involved in any other case. He further submitted that it is also correct that the aforesaid co-accused, namely, Vijay, from whom 268

grams of *heroin* was recovered has already been extended the benefit of regular bail by a Co-ordinate Bench of this Court on 26.05.2023. He has however opposed the grant of regular bail to the petitioner on the ground that qua the petitioner, there was recovery of 256 grams of *heroin*, which although is marginally higher than the commercial quantity as per the NDPS Act and therefore the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

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

5. It is a case where the petitioner is in custody for more than 3 years and 3 months and out of total 16 cited prosecution witnesses only 4 witnesses have been examined till date. Admittedly, the petitioner has no criminal antecedents and he is not involved in any other case. The alleged recovery qua the petitioner is 256 grams of *heroin* and the limit of commercial quantity as per the NDPS Act is 250 grams. Aforesaid co-accused, namely, Vijay, who is stated to be at parity with the present petitioner has already been extended the benefit of regular bail by a Co-ordinate Bench of this Court as aforesaid.

6. Recently, the Hon'ble Supreme Court in *Rabi Prakash's case* (*supra*) has also discussed the effect of Section 37 of the NDPS Act in such like cases of long custody. The relevant portion of the aforesaid judgment contained in para No.4 is reproduced as under:-

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this

stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

7. The Hon'ble Supreme Court in **Dheeraj Kumar Shukla's case** (**supra**) has observed as under:-

“3. It appears that some of the occupants of the 'Honda City' Car including Praveen Maurya @ Puneet Maurya have since been released on regular bail. It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed.”

8. Therefore, considering the aforesaid totality and circumstances of the present case, this Court is of the view that considering the long custody of petitioner, which comes out to be more than 3 years and 3 months and also the fact that the petitioner has no criminal antecedents and also other similarly situated co-accused, namely, Vijay, who is at parity with the petitioner has already been extended the benefit of regular bail by a Co-ordinate Bench of this Court on 26.05.2023, this Court is of the view that the bar contained under

Section 37 of the NDPS Act will not apply to the present petitioner and he is entitled for the grant of regular bail in the light of Article 21 of the Constitution of India.

9. Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

10. However, anything observed hereinabove shall not be treated as an expression of opinion on the merits of the case and is meant for the purpose of deciding the present petition only.

28.08.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No