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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-17504-2023(O&M)

Date of Decision:20.04.2023

Balwinder Singh @ Bittu

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Manjinder Singh Saini, Advocate for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

JASGURPREET SINGH PURI J.(Oral)

1. The present is a second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.0148 dated 28.05.2021, under Section 22(c) of the NDPS Act, 1985 registered at Police Station Gobindgarh Mandi, District Fatehgarh Sahib, Punjab

2. It is submitted by the learned counsel for the petitioner that the petitioner is in custody from 28.05.2021, which is almost 01 year and 11 months. He submitted that charges in the present case were framed on 09.12.2021 which is almost 01 year and 04 months ago. He submitted that as per the allegations, 2500 tablets of Alprazolam of 0.5 mg, were recovered from the bag of the petitioner and co-accused. He further submitted that the co-accused namely Ajay who is exactly at parity with the present petitioner, except that the petitioner is involved in one more case, has already been granted benefit of regular bail by

this Court on 23.02.2023 in CRM-M-60479-2022 (Annexure P-3). While referring to the aforesaid order, he submitted that the entire factual position with regard to repeated adjournments of 26 times by Trial Court stands already discussed and the conduct of the prosecution witnesses who are the police officials is also discussed in the said order wherein about 18 times, the prosecution witnesses were summoned and for number of times bailable warrants were issued against the prosecution witnesses and consequently this Court on the basis of the aforesaid reasoning had granted bail to the co-accused while making a departure from the bar contained under Section 37 of the NDPS Act and has referred to a judgment of Hon'ble Supreme Court in ***Satender Kumar Antil v. Central Bureau of Investigation and another 2022 (10) SCC 51*** in this regard was also discussed. He submitted that the present petitioner is exactly at parity with the co-accused

3. Learned counsel further brought to the notice of this Court the conduct of the prosecution witnesses for repeatedly not deposing before the Trial Court even after the passing of the bail order by this Court vide Annexure P-3. The aforesaid order was passed on 23.02.2023 and while referring to the zimni orders passed by the Trial Court i.e. on 28.02.2023 against the prosecution witness, who is police official and did not appear and as such bailable warrants were issued against him in the sum of Rs.5,000/-. Thereafter again on 28.03.2023 it was so noted by the learned Trial Judge that summons issued to ASI Jaswinder Singh and MHC Gurnam Singh were received back served but they did not appear and again bailable warrants were issued. He submitted that in view of the above the petitioner should be considered for the grant of regular bail in the present case.

4. On the other hand, Ms. Akshita Chauhan, learned DAG, Punjab has stated that it is correct that the petitioner is in custody for the last 01 year and 11

months and co-accused has already been granted regular bail by this Court on the ground of non-appearance of the prosecution witnesses for number of times.

5. I have heard learned counsel for the parties.
6. The other co-accused namely Ajay has already been granted regular bail by this Court while discussing the facts and reasons i.e. the conduct of the prosecution witnesses that for a number of times they did not appear and bother at all despite repeated summons and directions being issued to them. Even after the passing of the aforesaid bail order,ailable warrants were issued against the prosecution witnesses but no witness has been examined till date.
7. In view of the above and on the ground of parity, this Court is of the view that the petitioner deserves the concession of regular bail. 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.
8. 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

20.04.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No