

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

212

CRM-M-22068 of 2023 (O&M)

Date of Decision:21.07.2023

Ganesh Gulati @ Gautam

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. SPS Khaira, Advocate,
for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab

JASGURPREET SINGH PURI, J. (Oral)

CRM-21534 of 2023

Vide this application, the applicant-petitioner seeks to place on record the copy of the order dated 05.05.2023 passed in CRM-M-21998 of 2023.

For the reasons mentioned in the application, the same is allowed and the copy of the order dated 05.05.2023 passed in CRM-M-21998 of 2023 is taken on record as Annexure A-1.

Main case

1. This 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.60 dated 20.03.2021, under Sections 22, 25/61/85 of the NDPS Act, registered at Police Station Khanna City-2, District Ludhiana.

2. It has been submitted by learned counsel for the petitioner that the petitioner is in custody from 20.03.2021 which is about 2½ years and till date only one prosecution witness has been examined and he has submitted that the charges in the present case were framed on 16.11.2021, which is almost one year and nine months and the prosecution witnesses who are the police officials did not appear to depose before the Court for a long period of time even after the framing of the charges. He submitted that the petitioner is not involved in any other case and has clean antecedents. Learned counsel further submitted that as per the allegations there was an alleged recovery of 17700 intoxicant tablets from a bag lying near the rear seat of the car which was driven by the co-accused and the present petitioner was only a passenger. He submitted that the co-accused who was driving the car, namely, Shivam has already been extended the benefit of regular bail by a co-ordinate Bench of this Court vide CRM-M-3345 of 2023 on 19.04.2023 (Annexure P-7) and one other co-accused, namely, Mahesh Gulati has also been extended the benefit of regular bail by a co-ordinate Bench of this Court vide CRM-M-21998 of 2023 on 05.05.2023 (Annexure A-1) which has been attached alongwith CRM-21534 of 2023. He submitted that allegedly three persons were travelling in the car and other two co-accused have already been extended the benefit of regular bail by this Court and so far as the present petitioner is concerned, he is rather at a better footing than the aforesaid two co-accused and especially considering the fact that he has clean antecedents and is not involved in any other case. He submitted that in view of the aforesaid position wherein the present petitioner has already faced incarceration for about 2½ years and the fact that only one prosecution witness has been examined till date despite the fact that the charges were framed on

16.11.2021 which is almost one year and nine months have gone by, may be considered for the grant of regular bail especially in the light of the judgments of the Hon'ble Supreme Court in Satender Kumar Antil v. Central Bureau of Investigation and another 2022 (10) SCC 51, Mohd Muslim @ Hussain versus State (NCT of Delhi) 2023 AIR (SCC) 1648, Rabi Prakash v. The State of Odisha (Special Leave to Appeal (Crl.) No.(s) 4169 of 2023) and Dheeraj Kumar Shukla v. The State of Uttar Pradesh (Special Leave to Appeal (Crl.) No.(s) 6690 of 2022).

3. On the other hand, Mr. Sarabjit Singh Cheema, learned DAG, Punjab has submitted that so far as the custody period of the petitioner is concerned, the same is correct and only one prosecution witness has been examined till date and the charges in the present case were framed on 16.11.2021 which is almost one year and nine months ago. He has not disputed the fact that the petitioner is not involved in any other case. The parity of the petitioner with the other co-accused who have already extended the benefit of regular bail is also not disputed.

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

5. It is a case where the petitioner has already faced incarceration for about about 2½ years and the other similarly situated co-accused have already been extended the benefit of regular bail by a co-ordinate Bench of this Court vide Annexures P-7 and A-1. Not only the parity of the petitioner with the other co-accused but also the fact that the petitioner has already faced incarceration for about 2½ years but no justification has come forth as to why even after lapse of one year and nine months after the framing of the charges only one prosecution witness has been examined. The reliance made by learned counsel for the

petitioner upon the aforesaid judgments passed by the Hon'ble Supreme Court is well placed.

6. In view of the facts and circumstances of the present case, the bar contained under Section 37 of the NDPS Act will not apply in the present case especially in view of the fact that it is not the case of learned State counsel that in case the petitioner is released on bail, then he may abscond from justice or influence any witness. Therefore, considering the prayer of the petitioner in the light of Article 21 of the Constitution of India, the petitioner deserves the concession of regular bail. Consequently, the 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.

7. 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 both these petitions.

(JASGURPREET SINGH PURI)
JUDGE

July 21, 2023
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No