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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-23807-2023 (O&amp;M)

Date of Decision: 06.07.2023

**Sandeep Singh @ Kaku**

....Petitioner(s)

Versus

**State of Punjab**

.....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present: Mr. D.S. Bhinder, Advocate, for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

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**JASGURPREET SINGH PURI, J. (Oral)**

1. 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 FIR No. 06 dated 04.02.2021, under Sections 22/29 of NDPS Act, registered at Police Station GRP Bathinda.

2. It has been submitted by the learned counsel for the petitioner that the petitioner is in custody from 23.02.2021 which is almost 2 ½ years and this is the second successive bail petition filed by the petitioner. The earlier bail petition was dismissed on 08.09.2022 which is almost 10 months ago and at that point of time, his custody was 1½ years. He submitted that after the dismissal of the aforesaid bail petition of the petitioner, the other co-accused namely Rabinder Singh has been granted regular bail by a Co-ordinate Bench of this Court in CRM-M-17663-2022 vide Annexure P-5. He submitted that

charges in the present case were framed on 08.10.2021 which is more than 1 ½ years ago but only one witness has been examined till date and the remaining prosecution witnesses are not deposing before the learned trial Court consistently with the result that the petitioner had to face incarceration for about 2 ½ years for no fault of him. He further submitted that the alleged recovery from the other co-accused was 17000 tablets of Tramadol but no recovery was effected from the petitioner and the aforesaid other co-accused from whom recovery was effected has been admitted to bail and therefore, the petitioner is at better footing as compared to the other co-accused, namely, Rabinder Singh who has been extended the benefit of regular bail by a Co-ordinate Bench of this Court. He further submitted that the petitioner is having clean antecedents and is not involved in any other case and therefore, he may be considered for the grant of regular bail.

3. On the other hand, Mr. Rajiv Verma, learned DAG, Punjab has submitted that so far as the custody period of the petitioner is concerned, the same is not in dispute and more than 1 ½ years have expired after the framing of the charges only one witness has been examined. He further submitted on instructions that the petitioner is not involved in any other case.

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

5. The petitioner has already faced incarceration for about 2 ½ years. As per Annexure P-5, the other co-accused namely Rabinder Singh from whom there was alleged recovery of 17000 tablets of Tramadol has been extended the benefit of bail by a Co-ordinate Bench of this Court. Despite the charges being framed more than 1 ½ years back, only one witness has been examined. Hon'ble Supreme Court in *Satender Kumar Antil Versus Central Bureau of Investigation and another* [2022 (10) SCC 51] and also in *Mohd.*

*Muslim @ Hussain Versus State (NCT of Delhi) [2023 AIR (SC) 1648]* dealt with this issue with regard to delay in trial and its effect on the rights of the accused under Article 21 of the Constitution of India. In view of the aforesaid judgment of the Hon'ble Supreme Court in *Mohd. Muslim @ Hussain (Supra)*, the rigor of Section 37 of the NDPS Act will not apply to the petitioner in the light of Article 21 of the Constitution of India considering the aforesaid long custody of the petitioner and also the fact that the other co-accused from whom there was alleged recovery has been extended the benefit of bail by a Co-ordinate Bench of this Court.

6. 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, if not required in any other case.

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.

06.07.2023

rakesh

(JASGURPREET SINGH PURI)

JUDGE

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|--------------------|---|--------|
| Whether speaking   | : | Yes/No |
| Whether reportable | : | Yes/No |