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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-24127-2023 (O&M)

Date of Decision:12.12.2023

Avtar Singh

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Amit Khatkar, Advocate, for the petitioner.

Mr. Naveen Kumar Sheoran, DAG, Haryana

JASGURPREET SINGH PURI, J. (Oral)

1. Status report by way of affidavit of Superintendent of Police, Yamuna Nagar has been filed by the learned Deputy Advocate General, Haryana which is taken on record and a copy of the same has been supplied to the learned counsel for the petitioner who has stated that he has already received an advance copy and has perused the same.

2. The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No.106 dated 16.04.2021, under Sections 22/29, 61 and 85 of the NDPS Act, registered at Police Station Bilaspur, District Yamunanagar, Haryana.

3. Learned counsel for the petitioner submitted that the petitioner is in custody for 1 year and 10 months and only two prosecution witnesses have been examined till date. He submitted that the petitioner has clean

antecedents and is not involved in any other case and he has been falsely implicated in the present case wherein the recovery shown from the petitioner was 1050 tablets of Tramadol. He submitted that the petitioner was in fact falsely implicated in view of the fact that even much prior to the recovery, the FIR was registered under Section 22 of the NDPS Act and the other co-accused, who are although on the disclosure statement have already been granted bail by this Court. He submitted that considering the aforesaid false implication, the bar under Section 37 of the NDPS Act will not apply to the present petitioner and, therefore, the petitioner may be considered for the grant of regular bail.

4. On the other hand, Mr. Naveen Kumar Sheoran, learned DAG, Haryana while referring to the affidavit filed by the State submitted that so far as the custody period of the petitioner is concerned, the same is correct and he is in custody for 1 year and 10 months and only two prosecution witnesses have been examined. He submitted that so far as the plea of the false implication made by learned counsel for the petitioner is concerned, the same is not proved. He submitted that three queries were raised by this Court vide order dated 12.09.2023 and the same have been duly answered by the Superintendent of Police, Yamunanagar who has filed the affidavit in the Court. He submitted that so far as the compliance of Section 52 of the NDPS Act is concerned, it has been so stated in the affidavit that the procedure was duly complied with because the inventory was prepared in the presence of the Magistrate. He submitted that so far as the delay in sending the samples to the Forensic Laboratory is concerned, it has been so stated in the affidavit that the I.O who was investigated the case, had gone to Orissa for some other case and delay has occurred because of that reason and not because of any

mala fide intention of anybody. He submitted that so far as the third query raised by this Court pertaining to the fact that even prior to the confiscation of the aforesaid quantity of Tramadol, how the FIR was registered under Section 22 of the NDPS Act, to which it has been so stated in the affidavit that the same was not proper and rather an action has been taken against the police officer in this regard. He submitted that since the recovery from the petitioner was of commercial quantity i.e. 1050 tablets of Tramadol, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act. So far as the antecedents of the petitioner is concerned, he also submitted that the petitioner is having clean antecedents and is not involved in any other case.

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

6. This Court vide order dated 12.09.2023 had raised the following queries which are reproduced as under:-

“(i) While referring to Annexure P-1, he submitted that when the information was received by the police officials with regard to the petitioner, then a report under Section 42 of the NDPS Act was sent to the Deputy Superintendent of the Police, Bilaspur and along with that it was also stated that FIR be registered under Section 22 of NDPS Act and it was much later thereafter that the alleged recovery was effected from the petitioner and therefore how it could have been anticipated and under which provision of NDPS Act an FIR could have been registered and how in anticipation the provision of Section 22 of the NDPS Act could have been invoked.

(ii) There had been a delay of 17 days in sending the samples to the forensic laboratory.

(iii) There is also a probability that the provision of Section 52-A of the NDPS Act are not complied with although the same can be ascertained from the judicial record before the learned Magistrate.”

7. In the affidavit which has been filed by the Superintendent of Police, so far as the two queries which are at Nos.(ii) and (iii) are concerned, the same appear to be reasonable and justifiable. In answer to query No.8(i), even the Superintendent of Police in the affidavit has so stated in para 8(i) that the Sections of NDPS Act could not have been applied prior to the ascertainment of the contraband. The aforesaid para No. 8(i) of the affidavit is reproduced as under:-

“(i) That, on perusal of relevant documents it has been found that FIR u/s 22 NDPS Act was registered prior to seizure of contraband. FIR was registered on reasonable suspicion as per information provided by source whereas FIR should have been registered after recovery of contraband. Further, section(s) of NDPS Act to be applied could have been ascertained after recovery of the contraband and substance therein. Therefore, a show cause notice dated 09.12.2023 has been issued to SI Raj Kumar No.708/YNR for such negligence on his part. Further action will be taken after receipt of reply.”

8. The petitioner is stated to be in custody for 1 year and 10 months and he is also stated to be not involved in any other case, as per learned counsel for both the parties. As per the affidavit, even a show-cause notice has been issued to the police official for negligence. In view of the affidavit filed by the Superintendent of Police, wherein it has been so mentioned that the sections of NDPS Act could not be added prior to the

confiscation, this Court is of the view that the possibility of false implication cannot be ruled out and the same can be ascertained only at the time of trial by way of adducing evidence. Therefore, only for the purpose of considering the prayer of the petitioner for grant of bail coupled with the long custody and the fact that he is having clean antecedents, this Court is of the view that the bar of Section 37 of the NDPS Act will not apply to the present petitioner in the light of Article 21 of the Constitution of India. Furthermore, it is not the case of the State that in case the petitioner is released on bail, then he may repeat the offence or may influence any witness. However, in para No.12 of the affidavit filed by the Superintendent of Police, it has been so stated that if the petitioner is released on regular bail, then he can repeat the offence. However, no material has been shown as to on what basis the aforesaid apprehension has been expressed nor the same could be justified by the learned State counsel.

9. In view of the aforesaid facts and circumstances of the present case, 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.

10. 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.

12.12.2023

rakesh

(JASGURPREET SINGH PURI)

JUDGE

Whether speaking : Yes/No

Whether reportable : Yes/No