

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27196-2023
DECIDED ON: 01.09.2023

JAGMEET SINGH ALIAS JUGNU
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. G.S. Sandhu, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.113 dated 21.05.2022, under Section 22(c) of the NDPS Act, registered at Police Station Lambi, District Sri Muktsar Sahib, Punjab.
2. Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case. He further submitted that the petitioner is in custody from 21.05.2022, which is almost 1 year and 3 months and charges in the present case were framed on 22.02.2023 and almost six months have elapsed and not even a single prosecution witness has been examined till date. He further submitted that the alleged recovery shown in the present case qua the petitioner and other co-accused, namely, Jagmit Singh @ Jugnu was 285.450 grams of Tramadol and the commercial quantity is fixed at 250 grams under the NDPS Act and therefore the quantity is marginally higher than the commercial quantity. He further submitted that even as per the prosecution story and the FIR itself, there was no

recovery effected from the conscious possession of the petitioner and as per the FIR, two persons sitting near a canal were counting some tablets which were scattered on the floor and on looking at the police party, they tried to flee. He further submitted that although notice under Section 50 of the NDPS Act was given but it has been shown that the petitioner has given his consent of waiver that he does not wish to get himself searched from a Gazetted Officer or a Magistrate. He further submitted that it was a pre-planned effort on the part of the police because of political rivalry and the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner particularly in view of the fact that there was no recovery effected from the conscious possession of the petitioner even as per the prosecution apart from the fact that his custody is about 1 year and 3 months and till date no prosecution witness has been examined after the framing of the charges.

3. On the other hand, Mr. Rajiv Verma, DAG, Punjab has submitted that it is correct that the petitioner is in custody for about 1 year and 3 months and after the framing of charges on 22.02.2023, no prosecution witness has been examined till date. He has however opposed the grant of regular bail to the petitioner on the ground that since the recovery from the petitioner and other co-accused was 285.450 grams of Tramadol, which falls in the category of commercial quantity and even if it is marginally higher, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act. He further submitted that even if the tablets were found on the ground and not from the person of the petitioner, still it cannot be said that there was no recovery from the petitioner. He further contends that the petitioner is involved in another case, meaning thereby he is a habitual offender and does not deserve the concession of bail.

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

5. It is a case where the petitioner is in custody from 21.05.2022, which is

Tramadol from the polythene bag, which contained tablets which were lying near the petitioner and the other co-accused as aforesaid, who on seeing the police party tried to flee. So far as the plea made by learned counsel for the petitioner is concerned, there was no recovery effected from the conscious possession of the petitioner and the plea taken by the learned State counsel that the petitioner cannot be granted the concession of regular bail on the ground that he was in conscious possession of contraband, this Court does not wish to go into the aforesaid merits with regard to the same apart from that his custody is already about 1 year and 3 months but despite the framing of charges on 22.02.2023, no prosecution witness has been examined till date.

6. Considering the aforesaid in totality and circumstances of the case where the alleged recovery in the present case was 285.450 grams of Tramadol from two persons and that too from the floor from allegedly there was a recovery and the custody of about 1 year and 3 months would be a relevant factor for the purpose of considering the prayer of the petitioner for grant of regular bail in the light of Article 21 of the Constitution of India. 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. As far as pendency of other case is concerned, as has been stated by learned State counsel, no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would lend the petitioner in a situation of denial the concession of bail.

released on regular bail subject to furnishing bail bonds/surety bonds 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 the merits of the case and is meant for the purpose of deciding the present petition only.

01.09.2023

Meenu

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>