

[230] IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-27670-2023  
Date of Decision :15.11.2023

Sunny ...Petitioner

versus

State of Punjab ....Respondent

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

Present : Mr. Parminder Singh Sekhon, Advocate for the petitioner.  
Mr. G.S. Sidhu, AAG, Punjab.

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

[1] The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.15 dated 21.02.2023, under Section 22 of the NDPS Act, 1985, registered at Police Station Sadar Malout District Sri Muktsar Sahib.

[2] Learned counsel for the petitioner submitted that the petitioner is in custody for about 09 months. The investigation of the case has been completed and thereafter challan has been presented. However, no prosecution witness has been examined till date.

[3] He further submitted that the petitioner has been falsely implicated in the present case and he is not a habitual offender and he is not involved in any other case and has clean antecedents. While referring to the FIR, he submitted that as per the allegations, the police party saw the petitioner, who was carrying a transparent plastic polythene bag, in which there were some tablets and since the person, who had seen him was not a

officer thereafter and as per the FIR, the notice under Section 50 was also served. He submitted that the entire story was a concocted story and in fact the petitioner was picked up from his own home in the morning due to political enmity. To substantiate his argument, he refer to a document, vernacular of the same is shown to the Court today, which is document pertaining to giving information of the case, the reasons of arrest and information to the relatives as per the procedure. While referring to the same, he submitted that it has been so stated in the aforesaid information to the relatives that the mother-in-law of the petitioner was informed on her telephone number i.e.9056420294 and the name of the mother-in-law has also been mentioned as 'Rajji' and the aforesaid document has been witnessed by two police officers. However, at the end of the aforesaid document, the thumb impression of the mother-in-law of the petitioner has been taken by writing that she has been apprised about the arrest of the petitioner.

[4] Learned counsel laid much emphasis upon this document to show that once in the presence of witnesses, it has been so recorded in the aforesaid document that the information has been given to the mother-in-law on telephone and even the mobile number has been mentioned, there was no occasion for the police officers, who have got the thumb impression of the mother-in-law on the same document, which itself shows that the entire story was concocted and the entire documents are prepared in the police custody and witnessed by police officers and not by any independent witnesses. He further submitted that although the alleged

recovery from the petitioner is shown to be 50 tablets of *Etizolam* weighing 6.85 grams whereas as per the NDPS Act, the commercial quantity is fixed at 2.5 grams but the bar of Section 37 will not apply to the petitioner in view of the aforesaid facts and circumstances wherein the petitioner has been falsely implicated and is having clean antecedents.

[5] Learned counsel also submitted that in the State of Punjab even targets have been fixed by the police for registering of FIR under the NDPS Act and even a letter was issued by one of the police officer in this regard but later on, the same was withdrawn and false implications are not unknown in the State of Punjab. He further submitted that the petitioner is a 21 years old boy and has been a victim of political enmity at the hands of the police and therefore, may be considered for the grant of regular bail, especially considering that he has clean antecedents and is not a habitual offender.

[6] Learned counsel for the petitioner has also submitted that the total value of 50 tablets of *Etizolam* comes out to be Rs.200/- and it is not an expensive medicine and therefore can be easily planted by the police.

[7] On the other hand, learned State Counsel, has submitted that it is correct that the investigation in the case has completed and challan has also been presented and the custody of the petitioner has come up to be 08 months and 24 days but no prosecution witnesses have been examined, till date. He also submitted that so far as the antecedents of the petitioner is concerned, the same is also correct and as stated by learned counsel for the petitioner because as per the instructions, he is not

involved in any other case. He however submitted that mere fact that the thumb impressions of the mother-in-law of the petitioner was taken on the document in which it was so stated that she has been informed on telephone could not mean that the document was a self created document because the thumb impressions could have been obtained after she visited the police station.

[8] I have heard learned counsels for the parties.

[9] The petitioner is stated to be in custody for 08 months and 24 days and the investigation of the case is complete. The alleged recovery from the petitioner is stated to be 50 tablets of *Etizolam*, which falls in the category of commercial quantity as per the NDPS Act. Therefore, this Court would certainly consider the effect of Section 37 of the NDPS Act, while considering the prayer of the petitioner for the grant of regular bail.

[10] A perusal of the document, which has been presented before this Court today shows that it is a document pertaining to giving of information to the relatives of the person, who has been apprehended and it has been specifically stated in the aforesaid document that the mother-in-law of the petitioner namely *Rajji* was informed on telephone and even mobile number was also mentioned. The aforesaid document is witnessed by two police officers only and not by any independent person. At the end of the document, thumb impression of the aforesaid mother-in-law is also available. Such kind of inconsistency raises doubt and suspicion.

[11] In view of the aforesaid position, this Court would consider the prayer of petitioner also in the light of his criminal antecedents which

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is undisputed by the learned State Counsel that the petitioner is having clean antecedents and is not involved in any other case and the petitioner is a young boy of 21 years and as per learned counsel for the petitioner he was picked up from his own house in the morning by the police.

[12] Although, this Court does not wish to make any observation on merits especially pertaining to the aforesaid document but it is only for the purpose of considering the grant of bail to the petitioner, this Court is of the view that considering the aforesaid peculiar facts and circumstances, this Court is *prima facie* satisfied at this stage only for the purpose of considering the prayer for the grant of bail that the petitioner is not guilty of offence. Apart from the above, it is not the case of the State Counsel that in case the petitioner is released on bail then he may abscond from justice or may repeat the offence. Therefore, both the ingredients for making a departure from the bar contained under Section 37 of the NDPS remain satisfied and therefore the bar of Section 37 of the NDPS will not apply to the petitioner in the present case.

[13] Consequently, the present petition is *allowed* and the petitioner is ordered to be released on regular bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

[14] 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 present petition.

(JASGURPREET SINGH PURI)  
JUDGE

15.11.2023  
'Rajneesh'

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