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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-33364-2022 (O&M)
Date of decision: 25.08.2023

HARPREET SINGH ALIAS KALA

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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

Mr. Sarabjit Singh Cheema, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed 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 and he has no criminal background and he is not involved in any other 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 and also in view of the fact that the petitioner has no criminal background 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. He referred to the judgments of Hon'ble Supreme Court in *"Mohd. Muslim @ Hussain versus State (NCT of Delhi)"*, 2023 AIR(SC) 1648 and *Special Leave to Appeal (Criminal) No.6690 of 2022* titled as *"Dheeraj Kumar Shukla versus The State of Uttar Pradesh"* in this regard.

3. On the other hand, Mr. Sarabjit Singh Cheema, 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 further, on instructions from SI Ravinder Singh, has submitted that the petitioner has no criminal background and he is not involved in any other case. 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.

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 about 1 year and 3 months and there was alleged recovery of 285.450 grams of 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 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 but this Court would certainly consider the criminal antecedents of the petitioner, whereby admittedly the petitioner is not involved in any other case and 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. The Hon'ble Supreme Court in “Mohd. Muslim @ Hussain's casse (supra)” has dealt with this issue with regard to delay in trial and long custody of the accused person vis-a-vis the bar contained Section 37 of the NDPS Act. The relevant portion of the aforesaid judgment contained in para Nos.19 and 20 are reproduced as under:-

19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik). Grant of bail on

ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.

7. The Hon'ble Supreme Court in **“Dheeraj Kumar Shukla's case (supra)”** has observed as under:-

“3. It appears that some of the occupants of the 'Honda City' Car including Praveen Maurya @ Puneet Maurya have since been released on regular bail. It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed.”

8. Therefore, considering the aforesaid 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 considering the fact that the petitioner has no criminal background, 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.

9. Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety bonds 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 the merits of the case and is meant for the purpose of deciding the present petition only.

25.08.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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