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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34472-2022 (O&M)

Date of Decision: 15.02.2023

Sukhvir Singh @ Sukhi Singh

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. S.S. Gill, Advocate, for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

The present is a third petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No. 66 dated 01.06.2021, under Sections 22 and 29 of NDPS Act, registered at Police Station Sadar Sangrur, District Sangrur.

Learned counsel for the petitioner has submitted that this is a third successive bail petition. The first petition was dismissed on merits on 23.11.2021 and the second petition was dismissed as withdrawn on 25.04.2022. He submitted that now there is change in circumstances and therefore, the third bail petition would be maintainable.

Learned counsel has submitted that it is a case where the allegations in the FIR were that two co-accused namely, Ravi Kumar @ Kaku and Nirmal Sharma @ Nimu were apprehended by the police alongwith 4000

intoxicant tablets containing Tramadol. Thereafter on the basis of the disclosure statement of the aforesaid co-accused that the name of the petitioner and one more co-accused namely, Kulvir Singh was nominated and thereafter the petitioner was arrested and as of today the total custody of the petitioner is about 1½ years after excluding the period of interim bail which was granted to the petitioner. He further submitted that after the framing of the charges two witnesses have already been examined who are the material witnesses including the second I.O. He submitted that the name of the petitioner was nominated on the basis of disclosure statement of a co-accused which is not admissible in evidence and has also referred to the judgment of the Hon'ble Supreme Court in *Tofan Singh V/s. State of Tamil Nadu' [2021 (1) RCR (Criminal)1]*. He further submitted that there is no other cogent evidence available with the prosecution to connect the petitioner with the present offence. He further submitted that although this Court had discussed this issue on the basis of the arguments raised by the learned counsel for the State that there were telephonics exchanges between the petitioner and the other co-accused wherein the petitioner had made 24 phone calls to the other co-accused namely Nirmal Sharma @ Nimu and the aforesaid co-accused Nirmal Sharma @ Nimu also made 14 phone calls to the petitioner on his mobile phone and it was on that basis that the earlier bail petition was dismissed. He submitted that however now the other similarly situated co-accused who is at parity with the petitioner namely Kulbir Singh has been extended the benefit of regular bail by this Court in CRM-M-7048-2022. He submitted that the alleged confiscation of 4000 tablets of Tramadol was from the persons who were caught on the spot and even as per the prosecution, 2000 tablets were supplied by the petitioner and 2000 tablets were supplied by the aforesaid co-accused namely Kulbir Singh

who has been extended the benefit of regular bail by this Court as aforesaid. He further submitted that the effect of Section 37 of the NDPS Act was also discussed in the aforesaid case and the law laid down by the Hon'ble Supreme Court in *State by Intelligence Officer, Narcotics Control Bureau Vs. Munees Kavil Paramabath @ Munees KP, decided on 10.01.2022* was also discussed and bail was granted to the aforesaid co-accused by this Court and since the petitioner is at parity with the aforesaid co-accused, he may be considered for the grant of regular bail. He also submitted that it is a case where the petitioner is having clean antecedents and he is not involved in any other case.

On the other hand, Ms. Akshita Chauhan, learned DAG, Punjab has submitted that it is correct that the petitioner has faced incarceration for about 1½ years after excluding the period of interim bail granted to him. She submitted that it is also correct that the petitioner is not involved in any other case and has got clean antecedents and his name has been nominated on the basis of disclosure statement of co-accused who were apprehended on the spot. She has also not disputed that the other co-accused namely Kulbir Singh who is at parity with the petitioner has been extended the benefit of regular bail by this Court as aforesaid. She has however opposed the grant of bail to the petitioner on the ground that since the matter was serious in nature which involved total 4000 tablets of Tramadol out of which 2000 tablets were supplied by the petitioner, he does not deserve the concession of regular bail.

I have heard the learned counsel for the parties.

The petitioner has faced incarceration for about 1 ½ years. Two prosecution witnesses including the second I.O have already been examined. The other co-accused namely Kulbir Singh who is stated to be at parity with the present petitioner has been extended the benefit of regular bail by this Court

on 10.05.2022. The petitioner is having clean antecedents and is not involved in any other case as per the learned counsel for the parties.

So far as the effect of Section 37 of the NDPS Act is concerned, the same was discussed in detail in the bail order which was passed in the case of aforesaid co-accused Kulbir Singh who is stated to be at parity with the petitioner and therefore the prayer of the petitioner will not be hit by the aforesaid bar.

In view of the aforesaid facts and circumstances especially considering the fact that the co-accused namely Kulbir Singh who is at parity with the petitioner has been extended the benefit of bail by this Court and also considering the fact that the petitioner has faced incarceration for about 1½ years, this Court deems it fit and proper to grant regular bail to the petitioner.

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.

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.

15.02.2023

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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