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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-33441-2023

Date of decision: 15.12.2023

Akash

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Hardeep Singh Brar, Advocate for
Mr. S.K. Gupta, Advocate for the petitioner.

Mr. Rishu Madan, AAG, Punjab.

KARAMJIT SINGH, J. (ORAL)

1. This is a second petition filed under Section 439 of Cr.P.C for grant of regular bail to the petitioner in case FIR No.199 dated 15.06.2022 registered under Sections 21/29/61/85 of NDPS Act, at Police Station City Ferozepur, District Ferozepur.

2. The prosecution case in brief is that on 15.06.2022 the police received secret information against the petitioner and then it went to the disclosed place from where the petitioner was apprehended while he was carrying a bag and on checking on the said bag 300 grams of heroin was recovered from it.

3. The counsel for the petitioner submits that the petitioner who is having no criminal history, has been falsely implicated in the present case. It is further contended that the petitioner is in custody for the last about 1 year and 6 months and the trial has not proceeded ahead and till date no

prosecution witness has been examined. It is further pleaded that the petitioner be released on bail. In support of his contentions, the counsel for the petitioner has placed reliance upon Hasanujjaman & Ors. Vs. The State of West Bengal, SLP (Crl.) No.3221 of 2023, decided on 04.05.2023 wherein the Hon'ble Supreme Court granted bail to the accused in a case of commercial quantity of contraband on account of the fact that he was in custody for more than 1 year and 4 months.

4. Affidavit of Balkar Singh, Deputy Superintendent of Police (Detective), Ferozepur filed on behalf of the State is taken on record.

5. The present petition is resisted by the State counsel who submits that commercial quantity of contraband was recovered from the petitioner by police. It is further contended that after completion of investigation, challan presented and now the trial has commenced and further rigors of Section 37 of NDPS Act are applicable to the present case. However, the state counsel has not disputed the fact that petitioner is in custody for the last more than 1 year and 5 months and that till date prosecution is unable to examine any witness against the petitioner and further the petitioner is having no criminal history.

6. I have considered the submission made by counsel for the parties.

7. It is the case of the prosecution that commercial quantity of heroin was recovered from possession of the petitioner and he is in custody since 15.06.2022. As per the affidavit furnished by Deputy Superintendent of Police (Detective), Ferozepur, the petitioner is not involved in any other criminal case. Custody certificate reveals that the petitioner is in custody for

the last about 1 year and 6 months. Admittedly, till date prosecution has failed to examine any witness in support of its case during trial out of total 9 witnesses. So it will take time for the trial to conclude. In the given circumstances, there being delay in trial, especially when it is not attributable to the accused, in that situation, the effect of rigors of Section 37 of NDPS Act will be diluted.

8. For the forgoing reasons, no purpose is going to be served by prolonging the judicial custody of the petitioner.

9. Consequently, the present petition is allowed without commenting on the merits of the case and the petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

15.12.2023

Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No