

230

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-34149-2023
Date of decision: 31.08.2023

AMANDEEP SINGH @ TILI

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Arjun Veer Sharma, 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.63 dated 04.06.2021, under Sections 22, 25 and 29 of the NDPS Act, registered at Police Station Barnala, District Barnala, Punjab.

2. Learned counsel for the petitioner submitted that the petitioner is in custody from 04.06.2021, which is almost 2 years 2 months and 23 days. He further submitted that as per the allegations, the police had apprehended the petitioner with 2000 tablets of Tramadol, which although falls in the category of commercial quantity under the NDPS Act but the bar contained under Section 37 of the NDPS Act will not apply in the present case. He further submitted that the petitioner has no criminal background and he is not involved in any other

case. He further submitted that as per the prosecution, on the basis of disclosure statement of one co-accused, other co-accused were also nominated, namely, Mohit @ DP @ Mohit Kukreja, Sandeep Singh @ Saini, Parveen Sharma @ Golu @ Goldy, Birbhadar @ Kalu and Lakhwinder Singh and all the aforesaid co-accused have already been extended the benefit of regular bail by this Court. Some of the orders have been attached with the present petition as Annexure P-2 (Colly). He further submitted that at the time when the bail petitions of the aforesaid co-accused were considered, not only they were granted the benefit of regular bail by this Court on the ground that they were nominated on the basis of disclosure statement, but it was also considered by this Court that after the framing of the charges, no prosecution witness has been examined despite repeated bailable and non bailable warrants were issued and referring to the judgment of Hon'ble Supreme Court in **"Satender Kumar Antil versus Central Bureau of Investigation and another", 2022(10) SCC 51**, they were granted regular bail by this Court. He further submitted that even now when the petitioner has faced incarceration for about 2 years 2 months and 23 days, till date only 7 prosecution witnesses have been examined but those witnesses are only formal witnesses and none of the material witnesses including the complainant, Investigating Officer or recovery witnesses have been examined and therefore the entire exercise by the prosecution witnesses was an eye wash. He further submitted that the petitioner has no criminal antecedents and the custody of the petitioner comes out to be about 2 years 2 months and 23 days and the principle laid down by Hon'ble Supreme Court in **"Satender Kumar Antil versus Central Bureau of Investigation and another", 2022(10) SCC 51**,

“Mohd. Muslim @ Hussain versus State (NCT of Delhi)”, 2023 AIR(SC) 1648, Special Leave to Appeal (Criminal) No.6690 of 2022 titled as “Dheeraj Kumar Shukla versus The State of Uttar Pradesh” and Special Leave to Appeal (Criminal) No.4169 of 2023 titled as “Rabi Prakash versus The State of Odisha” will apply in the present case as well.

3. On the other hand, Mr. Sarabjit Singh Cheema, DAG, Punjab has filed the custody certificate of the petitioner in Court today and the same is taken on record. As per the custody certificate filed, the petitioner is in custody for about 2 years 2 months and 23 days. He submitted that 7 prosecution witnesses have been examined but none of the material witnesses i.e. the complainant, Investigating Officer or the recovery witnesses have been examined till date. He further submitted that the aforesaid co-accused, who were nominated on the basis of disclosure statement have already been extended the benefit of regular bail by this Court. He further submitted that so far as the present petitioner is concerned, he is not at parity with the aforesaid co-accused in view of the fact that the recovery of 2000 tablets of Tramadol was effected from the present petitioner himself which falls in the category of commercial quantity under the NDPS Act and therefore the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act. So far as the criminal antecedents of the petitioner is concerned, he submitted that the petitioner is not involved in any other case.

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

5. It is a case where the petitioner has already faced incarceration for about 2 years 2 months and 23 days and as per the learned counsel for the

parties, 7 prosecution witnesses have been examined but the material witnesses have still not been examined. The petitioner is stated to be not involved in any other case as per the learned counsel for the parties. Earlier when the bail petitions of the aforesaid co-accused, who were nominated on the basis of disclosure statement were considered by this Court, one of the reasons for grant of regular bail was that despite repeated bailable and non bailable warrants issued to the prosecution witnesses they have not appeared and while referring to the judgment of Hon'ble Supreme Court in Satender Kumar Antil's case (supra) they were extended the benefit of regular bail. However it appears that the position still remains to be the same because although as per the learned counsel for the parties, 7 prosecution witnesses have been examined but the material witnesses are still not examined. The petitioner is stated to be having no criminal background and this Court is of the view that in view of the aforesaid judgments of the Hon'ble Supreme Court, the petitioner also deserves the concession of regular bail and the bar contained under Section 37 of the NDPS Act will not apply to the petitioner in the light of Article 21 of the Constitution of India because of the custody of the petitioner which comes out to be about 2 years 2 months and 23 days as per the custody certificate filed by the State.

6. Therefore, considering the aforesaid totality and circumstances of the present case, this Court deems it fit and proper to grant regular bail to the petitioner.

7. 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.
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.

31.08.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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