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

CRM-M-45391-2023

Date of Decision: 16.10.2023

Parminder Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Atul Kaushik, Advocate
for the petitioner.

Mr. G.S. Sidhu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

1. 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 case bearing FIR No.192 dated 04.10.2019, under Section 22 of the NDPS Act, registered at Police Station Kotwali, Bathinda, District Bathinda.

2. It has been submitted by learned counsel for the petitioner that the petitioner is in custody for more than 4 years and submitted that the petitioner is having clean antecedents and is not involved in any other case and has been falsely implicated in the present case. He further submitted that the alleged recovery from the petitioner and the other co-accused is 11,800 tablets of *Tramadol* and 3200 tablets of *Alprazolam* which was recovered from each of them and therefore, the total confiscated quantity comes out to be 23,600 tablets of *Tramadol* and 6400 tablets of *Alprazolam*. He further

submitted that although the alleged recovery from the petitioner and the co-accused was on the larger side but the petitioner is entitled for the grant of regular bail in view of the fact that he is exactly at parity with the other co-accused, namely, Sonu Singh, who has since been granted regular bail by this Court in CRM-M-43422-2022 on 03.07.2023. He further submitted that the aforesaid co-accused has been granted regular bail by passing of a detailed order by this Court primarily on the ground that despite the fact that his incarceration was long and the matter was adjourned by the trial Court at that point of time for about 23 times but only 2 prosecution witnesses were examined, who were not even the material witnesses and while referring to the judgments passed by the Hon'ble Supreme Court in "Satender Kumar Antil Vs. Central Bureau of Investigation and another", 2022(10) SCC 51 and "Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)" 2023 AIR(SC) 1648, he was granted regular bail by this Court notwithstanding the bar contained under Section 37 of the NDPS Act and in the light of Article 21 of the Constitution of India. He further submitted that so far as the present petitioner is concerned, his incarceration is more than the aforesaid co-accused and only 5 witnesses have been examined till date and the total incarceration of the petitioner comes out to be more than 4 years. He also submitted that for more than 23 times, the case has been adjourned for summoning the prosecution witnesses but they did not choose to appear and rather for two times the learned trial Court had to issue bailable warrants and it appears that only after the aforesaid co-accused, namely, Sonu Singh was granted regular bail by this Court that 3 more witnesses have been examined but so far as the prayer of the petitioner for grant of regular bail is

concerned, the same is not only on the basis of the parity with the aforesaid co-accused, but is also on the basis of the fact that his total incarceration is more than 4 years and he has clean antecedents and is not involved in any other case and therefore, the petitioner may also be considered for grant of regular bail.

3. On the other hand, Mr. G.S. Sidhu, learned AAG, Punjab, submitted that it is correct that the total incarceration of the petitioner is more than 4 years and it is also correct that the aforesaid co-accused, namely, Sonu Singh has been granted regular bail by this Court. He has however submitted that now 5 witnesses have been examined and 3 have been given up, therefore, the trial is going at fast pace, hence the petitioner is not entitled for the grant of regular bail.

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

5. The present is a third petition filed by the petitioner and the earlier was withdrawn by him on 14.01.2021 and second was again withdrawn by him on 24.02.2022 and now the present is a third petition after a lapse of about 1½ years. The total incarceration of the petitioner has come out to be more than 4 years and he is stated to be having clean antecedents and is not involved in any other case. This Court had an occasion to deal with the bail petition of the co-accused, namely, Sonu Singh and allowed his petition on the ground that the prosecution witnesses were not coming forward for the purpose of deposing before the Court and while referring to the judgments of the Hon'ble Supreme Court in *Satender Kumar Antil's case (supra)* and *Mohd. Muslim @ Hussain's case (supra)* his bail petition was allowed and it was also held that the bar contained under Section 37 of

the NDPS Act would not apply in the light of the Article 21 of the Constitution of India. So far as the present petitioner is concerned, although now 3 more witnesses have been examined but this Court is of the view that the petitioner will remain at parity with the aforesaid co-accused and especially in view of the fact that his total custody is more than the aforesaid co-accused and now his total custody is more than 4 years and the trial of the case may take a long time.

6. Therefore, considering the judgments of the Hon’ble Supreme Court in *Satender Kumar Antil’s case (surpa)*, and *Mohd. Muslim @ Hussain’s case (supra)*, this Court is of the view that the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner as well in the light of Article 21 of the Constitution of India.

7. In view of the aforesaid facts and circumstances of the present case, this Court deems it fit and proper to grant regular bail to the petitioner. 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.

8. 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.

16.10.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |