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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-41752-2023  
Date of decision: 29.08.2023

VIPIN

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present:- Mr. Daman Dhir, Advocate and  
Ms. Poonam Rani, Advocate  
for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab.

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**JASGURPREET SINGH PURI, J. (Oral)**

1. The present is a fifth petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.167 dated 10.10.2020, under Section 420 of the IPC; Sections 13 and 3 of the Public Gambling Act and Sections 21 and 29 of the NDPS Act, registered at Police Station Mataur, District SAS Nagar, Mohali, Punjab.

2. Learned counsel for the petitioner has submitted that the present is a fifth successive bail petition filed by the petitioner and earlier all the petitions were dismissed as withdrawn on different dates vide Annexure P-3 to Annexure P-6. He further submitted that now the successive bail petition has been filed which is maintainable in view of the fact that now the custody of the petitioner is about 2 years 10 months and 18 days as he was arrested on 10.10.2020. He

further submitted that it is a case where the allegations were that police got an information that the petitioner along with other co-accused were indulging in gambling on the day when IPL cricket match was being played and on conducting raid, the petitioner and the other co-accused were apprehended and there was recovery of 570 grams of *heroin* in total from all the accused. He further submitted that the charges in the present case were framed on 16.09.2021 and almost 2 years have elapsed and till date only 3 prosecution witnesses have been examined. He further submitted that the delay is not at the end of the petitioner but because the prosecution witnesses are not deposing before the learned trial Court, the delay has been caused. He further submitted that be that as it may, considering the custody of the petitioner, which is very large and considering the judgments of the Hon'ble Supreme Court in *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"* the petitioner may be considered for grant of regular bail.

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 2 years 10 months and 18 days and only 3 prosecution witnesses have been examined till date after the framing of charges on 16.09.2021. He has however opposed the grant of regular bail to the petitioner on the ground that the total recovery from all the accused was 570 grams of *heroin* and also that the petitioner is involved in three more cases out of which two cases are under Section 420 of the IPC

and one case under the Prisons Act but the petitioner is not involved in any other case under the NDPS Act.

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

5. The present is a fifth successive bail petition filed by the petitioner and earlier all the petitions filed by the petitioner were dismissed as withdrawn. Now the total custody of the petitioner is about 2 years 10 months and 18 days and therefore this Court is of the view that considering the custody of the petitioner, the successive bail petition filed by the petitioner is maintainable. The charges in the present case were framed on 16.09.2021 and almost two years have elapsed and only 3 prosecution witnesses have been examined till date. The trial is being delayed. The total incarceration of the petitioner is more than 2 years and 10 months as aforesaid. The petitioner is stated to be not involved in any other case under the NDPS Act. However, he is involved in two cases under Section 420 of the IPC and one case under the Prisons Act.

6. 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.”*

7. Recently, the Hon'ble Supreme Court in *Rabi Prakash's case* (*supra*) has also discussed the effect of Section 37 of the NDPS Act in such like cases of long custody. The relevant portion of the aforesaid judgment contained in para No.4 is reproduced as under:-

*“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”*

8. After hearing learned counsel for the parties, this Court is of the considered view that considering the long custody of the petitioner, which is about 2 years 10 months and 18 days and till date only 3 prosecution witnesses have been examined after the framing of the charges on 16.09.2021, the petitioner deserves the concession of regular bail in the light of Article 21 of the Constitution of India and the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner in the light of aforesaid facts and circumstances of the case and also in the light of aforesaid judgments of Hon'ble Supreme Court.

9. Therefore, considering the aforesaid totality and circumstances of the case, this Court deems it fit and proper to grant regular bail to the petitioner.
10. Consequently, the present petition is allowed. The petitioner shall be released on regular bail, if not required in any other case, subject to furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.
11. 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.

29.08.2023  
Chetan Thakur

(JASGURPREET SINGH PURI)  
JUDGE

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