

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-46840-2022 (O&M)

Date of Decision: 27.02.2023

GURJANT SINGH

....Petitioner(s)

Versus

STATE OF HARYANA

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Manpreet Ghuman, Advocate, for the petitioner.

Ms. Nidhi Garg, AAG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

The present is a sixth petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No. 329 dated 08.10.2019, under Sections 15, 29, 61 and 85 of NDPS Act, registered at Police Station Sadar Jind, District Jind.

Learned counsel for the petitioner submitted that although the present is a sixth successive bail petition which has been filed by the petitioner and earlier two petitions for bail were dismissed by this Court and one petition was for grant of interim bail but as of now the petitioner has faced incarceration for 3 years and 4 months. She submitted that it is a case where there was an alleged recovery of 75 kgs. of poppy husk from the petitioner and the commercial quantity under the NDPS Act is 50 kgs. She submitted that in fact the present case has been planted upon the petitioner by the police party especially by ASI Jaiveer Singh who himself was

smuggling the drugs and thereafter against him an FIR was lodged under the NDPS Act. She submitted that the same person against whom after the lodging of the present FIR, an FIR was lodged under the NDPS Act was the person who had allegedly apprehended the petitioner. She submitted that although all the pleas were taken up in the earlier petition but now the total custody of the petitioner is 3 years and 4 months and only six witnesses have been examined and therefore, considering the custody of the petitioner, he may be considered for the grant of regular bail especially in view of the fact that the person who had apprehended the petitioner is himself involved in a case under the NDPS Act. She submitted that although the petitioner is involved in other cases under the NDPS Act but in view of the peculiar facts and circumstances of the present case, the petitioner may be considered for the grant of regular bail.

On the other hand, Ms. Nidhi Garg, learned AAG, Haryana has submitted that it is correct that the petitioner has faced incarceration for 3 years and 4 months but she has opposed the grant of regular bail to the petitioner on the ground that the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

I have heard the learned counsel for the parties.

The petitioner has faced incarceration for 3 years and 4 months. Six witnesses have already been examined. Since the total quantity involved in the present case was 75 kgs. of poppy husk which falls in the category of commercial quantity, the effect of Section 37 of the NDPS Act is also to be considered. Learned counsel for the petitioner submitted that the person who had allegedly apprehended the petitioner namely ASI

Jaiveer Singh was himself involved in smuggling of drugs and an FIR No. 392 dated 24.12.2020, under Sections 15(c), 25, 29, 59 of NDPS Act, Police Station Uchana, District Jind was registered against him and it is a case of false implication of the present petitioner. The aforesaid fact would also be important for the purpose of considering the effect of Section 37 of the NDPS Act. Be that as it may, the petitioner has already faced incarceration for 3 years and 4 months and therefore in the light of Article 21 of the Constitution of India, the petitioner would deserve the concession of regular bail. Furthermore, it is not the case of the State counsel nor it has been argued by learned State counsel that in case the petitioner is released on bail, then he may repeat the offence or abscond from justice.

In view of the aforesaid facts and circumstances particularly considering the long custody of the petitioner which is 3 years and 4 months, this Court deems it fit and proper to grant regular bail to the petitioner in the light of Article 21 of the Constitution of India.

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.

27.02.2023

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No
: Yes/No