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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARHCRM-M-45528-2023(O&M)
Date of Decision:19.09.2023**Rakesh Manchanda**

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr.Rohit Kumar, Advocate, for the petitioner.

Mr. Ramdeep Partap Singh, Senior DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a fourth petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No.167 dated 10.10.2020, under Section 420 IPC, Sections 13 and 3 of the Public Gambling Act and Sections 21, 29, 61 and 85 of the NDPS Act, registered at Police Station Mataur, District SAS Nagar, Mohali.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody for about 3 years and only three witnesses have been examined till date by the prosecution. He submitted that the allegations against the petitioner were that with regard to 270 grams of heroin and 300 grams of heroin was from the possession of the other co-accused, namely, Vipin. He further submitted that petitioner is not involved in any other case and has got clean antecedents and the aforesaid co-accused Vipin has already been extended the benefit of regular bail by this Court vide Annexure P-3 in CRM-M-41752-2023 on 29.08.2023. He submitted that so far as the present

petitioner is concerned, he is at parity with the aforesaid co-accused and he has been granted bail by this Court by passing a detailed order and also by referring to the judgments of the Hon'ble Supreme Court in ***Dheeraj Kumar Shukla vs. The State of Uttar Pradesh (Special Leave to Appeal (Crl.) No.(s) 6690 of 2022)*** and also ***Rabi Prakash Versus State of Odisha, Special Leave to Appeal (Crl.) No.4169 of 2023*** since the trial of the case was not progressing and he was granted bail in view of long custody. He submitted that so far as the present petitioner is concerned, he is in custody for about 3 years and the stage of the trial is same as it was at the time when the bail was granted to the aforesaid co-accused and therefore, on the ground of parity as well, the petitioner may be considered for the grant of regular bail.

3. On the other hand, Mr. Ramdeep Partap Singh, Senior DAG, Punjab has submitted that so far as the custody of the petitioner is concerned, the same is correct and although it is the successive bail petition filed by the petitioner but the parity of the petitioner with the aforesaid co-accused cannot be disputed. He submitted that the petitioner is not involved in any other case.

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

5. The petitioner is stated to be in custody for about 3 years. The present is a fourth successive bail petition and earlier he had withdrawn two bail petitions and one petition was dismissed by this Court on 21.02.2022 which is almost 1 ½ years ago but now the other co-accused who is stated to be at parity with the present petitioner has been extended the benefit of regular bail by this Court vide Annexure P-3 by referring to the judgments of the Hon'ble Supreme Court as aforesaid. The reasoning given in the aforesaid bail order was pertaining to the long custody and at that stage only three witnesses were examined. The same reasoning shall follow in the present case as well

since even till date as per learned counsel for the parties only three witnesses have been examined by the prosecution but the petitioner has faced incarceration for 3 years. Furthermore, it is not the case of the State that in case the petitioner is released on bail, then he may influence any witness or may tamper with evidence or may flee from justice.

6. In view of the aforesaid totality and circumstances in this case as well the bar of Section 37 of the NDPS Act will not apply in the light of Article 21 of the Constitution of India.

7. 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.

8. 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.

19.09.2023

rakesh

(JASGURPREET SINGH PURI)

JUDGE

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