

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

213

CRM-M-48739 of 2022

Date of Decision:13.04.2023

Netar Singh

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sandeep Verma, Advocate,
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab

JASGURPREET SINGH PURI, J. (Oral)

The present is a second petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No.133 dated 22.09.2021, under Sections 18 and 27 of the NDPS Act, 1985, registered at Police Station City Morinda, District Roop Nagar.

Learned counsel for the petitioner submitted that the petitioner is an old man of the age of 66 years and he is suffering from various ailments. He submitted that the petitioner is in custody since one year and seven months and the petitioner has clean antecedents and he is not involved in any other case. He submitted that the petitioner was working as a cleaner in order to sustain his livelihood alongwith other co-accused who is the driver as well as owner of the truck wherein there was a recovery of 5 kgs. of opium from under the seat of the driver and on the basis of the aforesaid apprehension that the name of the

petitioner has figured in the FIR although the petitioner has got no role to play especially when he is not involved in any other case. He submitted that now out of 19 prosecution witnesses 7 have already been examined and the charges were framed on 14.03.2022 which was almost one year ago. He submitted that considering the custody of the petitioner and the fact that he is not involved in any other case and that there was no recovery from the conscious possession of the petitioner, he may be considered for the grant of regular bail. Learned counsel has also referred to a latest judgment of the Hon'ble Supreme Court in **Mohd Muslim @ Hussain versus State (NCT of Delhi)** Criminal Appeal No.943/2023, date of decision 28.03.2023 in this regard.

On the other hand, Ms. Akshita Chauhan, learned DAG, Punjab has submitted that it is correct that the petitioner has faced incarceration for one year and seven months and he has clean antecedents and is not involved in any other case. She submitted, on instructions from Sohan Singh, Investigating Officer, that 5 kgs. of opium was found from the underneath seat of the driver who is the co-accused and who is also the owner of the truck and the petitioner was a cleaner. She has however opposed the grant of bail to the petitioner on the ground that since the quantity confiscated falls within the commercial quantity and therefore the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

I have heard learned counsel for the parties.

The petitioner has already faced incarceration for one year and seven months. He is not involved in any other case and as per learned counsel for the parties, the petitioner has clean antecedents. The age of the petitioner is about 66

years. The recovery of 5 kgs. of opium was underneath seat of the driver who was the owner of the truck and co-accused in the present case. As per the prosecution, the recovery was not effected from the conscious possession of the petitioner. The FIR has been lodged under Sections 18 and 27 of the NDPS Act and not under Section 29 of the NDPS Act. As per learned counsel for the parties, even charges have been framed under Sections 18 and 27 of the NDPS Act.

Therefore, considering the custody of the petitioner, age of the petitioner, clean antecedents of the petitioner and also the latest judgment of the Hon'ble Supreme Court in *Mohd Muslim @ Hussain's* case (supra), this Court deems it fit and proper to grant bail to the petitioner and especially in view of the fact that as per the prosecution itself the recovery was not effected from the conscious possession of the petitioner, therefore the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner especially in the light of Article 21 of the Constitution of India.

In view of the above, 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.

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 the present petition.

(JASGURPREET SINGH PURI)
JUDGE

April 13, 2023

dinesh

Whether speaking : Yes/No

Whether reportable : Yes/No