

CRM-M-50252-2022 (O&M)

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

CRM-M-50252-2022 (O&M)

Date of Decision: 07.12.2023

Mandeep Singh @ Tinku

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Rajesh Kapila, Advocate with
Ms. Himani Kapila, Advocate,
for the petitioner.

Mr. Ramdeep Partap Singh, Sr. DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.84 dated 09.07.2022, under Sections 22 NDPS Act, 1985, registered at Police Station Kulgarhi, District Ferozepur.

2. An additional affidavit has been filed by the Senior Superintendent of Police, Ferozepur, who is also present in Court today in pursuance of the order passed by this Court on 17.11.2023 and 21.11.2023 and the same is taken on record.

3. Learned counsel for the petitioner submitted that it is a case where the petitioner is in custody from 09.07.2022, which is almost 1 year and 5 months. He further submitted that the charges in the present case were framed on 04.03.2023 and till date only one prosecution witness, namely, C/C Kamaljeet Kaur has been examined. He also submitted that it is a case

where the petitioner is having clean antecedents and is not involved in any other case and he has been falsely implicated in the present case by the police.

4. To substantiate his arguments, he while referring to two affidavits filed by the SSP submitted that the present FIR is lodged on 09.07.2022, wherein it has been so stated that on the same day, in the evening at around between 07:00 PM to 08:00 PM, the petitioner was intercepted by the police party and as per the prosecution story, there was a confiscation of 970 intoxicant tablets containing the salt of *Etizolam* weighing 126 grams in total from the petitioner. He further submitted that although the aforesaid quantity falls in the category of commercial quantity under the NDPS Act but in the present case, the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner in view of the fact that he has been falsely implicated by the police.

5. To further substantiate his arguments, he submitted that there are two different CDs, which have also been discussed by the SSP in the affidavits. In the first CD, which was made by a Press Reporter wherein the petitioner was in his shop and the police was having a search operation done and the petitioner was seen in the CD which is only of 21 seconds. In the second CD, it is of about 12:45 PM in the afternoon, wherein a Scorpio car of police officials had come and was parked exactly opposite the shop of the petitioner and the police personnels came out from the Scorpio car and went inside the shop of the petitioner and immediately after sometime, the petitioner was also accompanied them and he was also put in the Scorpio car and was taken to the police station. He further submitted that the story which

was put forward by the police was that he was apprehended in the evening, which is totally a false story. He also submitted that even all the respectables of the village have also informed the police that the petitioner is not indulging in these activities. He while further referring to the affidavit submitted that even as per the affidavit filed by the SSP, it has been so stated that the first CD as aforesaid was not having date etc. and it is just probable that the first CD is of different date and it is also stated in the affidavit that so far as the second CD of 30 minutes is concerned wherein the petitioner was taken in the Scorpio car, the face of the petitioner was not recognizable. He further submitted that even if the face of the petitioner in the CD is not recognizable but the fact remains that the aforesaid Scorpio car of the Police getaway was parked exactly outside the shop of the petitioner and he was taken out from his shop and it is a clearcut case of false implication of the petitioner. He submitted that considering the aforesaid facts and circumstances of the case, the petitioner may be considered for grant of regular bail.

6. On the other hand, Mr. Ramdeep Partap Singh, learned Senior Deputy Advocate General, Punjab on instructions from Senior Superintendent of Police, Ferozepur, who is present in Court today, submitted that so far as the custody of the petitioner is concerned, the same is not in dispute and it is also not in dispute that only one witness, namely, C/C Kamaljeet Kaur has been examined till date. He further submitted that as per the affidavit filed by the State, it was not a case of false implication because so far as the first CD is concerned, the same is not shown to be of the same date as that of the date of the FIR i.e. 09.07.2022 and therefore, no

corroboration and no reliance can be placed upon first CD where of course the petitioner was seen in the CD but it could not have been of the same date and therefore, there cannot be any case of false implication. While referring to the second CD, he clarified that the face of the person, who was taken in the Scorpio car is not recognizable and it cannot be said that it was the petitioner, who was taken in the Scorpio car, and therefore, it was not a case of false implication. He further submitted that the recovery is of commercial quantity and therefore, the bar contained under Section 37 of the NDPS Act will apply in the present case. So far as the antecedents of the petitioner are concerned, he also submitted on instructions that the petitioner has clean antecedents and is involved in any other case.

7. I have heard the learned Counsels for the parties.

8. The petitioner is stated to be in custody for 1 year and 5 months. The charges in the present case were framed on 04.03.2023 and till date, only one prosecution witness i.e. C/C Kamaljeet Kaur has been examined. Even as per the learned State Counsel, the petitioner is stated to be having clean antecedents and is not involved in any other case. For the purpose of considering the bar contained under Section 37 of the NDPS Act, this Court would certainly consider the effect of Section 37 of the NDPS Act upon the present case. The sole plea taken by the learned Counsel for the petitioner is false implication. The leaned counsel for the petitioner during the course of arguments has shown the second CD which was of taking of one person in a car, was shown to the Court and also to the learned State Counsel. The date of that CD is undisputedly 09.07.2022 and the time is also undisputedly around 12:00 PM. During the course of arguments, this Court has put a

specific query to the learned State Counsel that whether the aforesaid police vehicle was parked exactly in front of the shop of the petitioner or not, to which he stated on instructions that the parking of the police vehicle was exactly outside the shop of the petitioner. Therefore, the only plea which has been raised by the learned State Counsel is that since the face of that person is not recognizable, it cannot be said that it was the petitioner, who was taken into the car. After perusing the aforesaid CD, it also transpires that when the aforesaid police vehicle was parked exactly opposite the shop of the petitioner then some of the police personnel came out from the car and went to the shop of the petitioner and thereafter, one person came out along with the police personnel and was taken into the car. Although the identity of the face of the person, who was taken into the car, is disputed by the State Counsel on instructions but it is not disputed by the State Counsel that the police vehicle on the same date on 09.07.2022 at around 12:45 PM was got parked opposite the shop of the petitioner and one person was taken out from the shop. In other words, except for the identity of the person, the remaining things are not disputed by the learned State Counsel on instructions. Therefore, this Court is of the view that the false implication cannot be ruled out in the present case since the incident of taking the petitioner into the custody is shown to be in the evening at around between 7:00 to 8:00 PM. Therefore, on the basis of the aforesaid facts and circumstances, this Court is of the *prima facie* view at least at this stage for the purpose of considering the prayer of the petitioner for grant of regular bail that he is not guilty of any offence. Apart from the above, the petitioner is stated to be having clean antecedents and is not involved in any other case and furthermore, it is

neither the case of the State nor it has been so argued by the learned State counsel that in case the petitioner is released on regular bail then he may abscond or flee from justice or may influence the witnesses or may repeat the offence. Therefore, both the ingredients for making a departure from the bar contained under Section 37 of the NDPS Act remain satisfied. Consequently, this Court is of the view that the bar contained under Section 37 of the NDPS Act will not apply to the petitioner.

9. In view of the aforesaid totality of the facts and circumstances, 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.

10. 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.

07.12.2023

Bhumika

(JASGURPREET SINGH PURI)

JUDGE

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