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

CRM-M-50389-2023 (O&M)

Date of Decision: 07.12.2023

Jaswinder Singh @ Jassa

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. G.S. Sandhu, Advocate, for the petitioner.

Mr. Gurdarshan Singh Sidhu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a third petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No. 115 dated 07.08.2022, under Sections 15, 25 and 29 of NDPS Act, registered at Police Station Sadar, Jalalabad, District Fazilka.

2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is in custody for 1 year, 3 months and 28 days and investigation of the case has already been completed and thereafter even charges have been framed on 16.09.2023. He submitted that petitioner is not involved in any other case and has got clean antecedents and in the present case, the police had intercepted a truck from where there was alleged recovery of 125 kgs. of poppy husk but so far as the present petitioner is concerned, he was only sitting in the truck as a passenger and he was neither

the owner nor the driver of the truck. He further submitted that one of the co-accused namely, Chhinder Singh who was rather sitting in the truck and is the owner of the truck has already been extended the benefit of regular bail by a Co-ordinate Bench of this Court vide Annexure P-4 on 18.01.2023 and the petitioner is rather on a better footing than the aforesaid co-accused. He submitted that considering the fact that there is no recovery effected from the person of the petitioner and the petitioner has got no relationship with the truck either as a driver or as an owner, the bar of Section 37 of the NDPS will not apply to the present petitioner and therefore, he may be considered for the grant of regular bail.

3. On the other hand, Mr. Gurdarshan Singh Sidhu, learned AAG, Punjab has submitted that it is correct that the petitioner is in custody for 1 year, 3 months and 28 days and it is also correct that he at that point of time was not driving the truck nor he is the owner of the truck. So far as the antecedents of the petitioner is concerned, he also submitted that the petitioner is not involved in any other case. He has however submitted that from the truck there was a recovery 125 kgs. of poppy husk which falls in the category of commercial quantity, the petitioner is not entitled for the grant of regular bail.

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

5. It is a case where the petitioner has already faced incarceration for 1 year, 3 months and 28 days and the petitioner is not involved in any other case as per the learned counsel for the parties. The petitioner is stated to be neither the driver nor the owner of the truck. One of the other co-accused namely, Chhinder Singh who is stated to be owner of the truck and also found sitting in the truck has already been extended the benefit of

regular bail by a Co-ordinate Bench of this Court vide Annexure P-4 on 18.01.2023. Since there was no recovery from the person of the petitioner and he is rather at a better footing than the other co-accused who has been extended the benefit of regular bail, then on the ground of parity as well, the bar of Section 37 of the NDPS Act will not apply to the present petitioner.

7. 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.

8. 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.

07.12.2023

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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