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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-49060-2023
Date of decision: 06.12.2023

SUNIL @ SAGAR

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. L. S. Sekhon, Advocate
for the petitioner.

Mr. Gurdarshan Singh Sidhu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.16 dated 04.03.2023, under Sections 22, 27, 29 of the NDPS Act and Sections 379, 411 of the IPC, registered at Police Station Sanaur, District Patiala, Punjab.

2. Learned counsel for the petitioner submitted that the petitioner is in custody for about 9 months and 2 days and he is not involved in any other case and has clean antecedents. He further submitted that in fact the petitioner has been falsely implicated in the present case due to political enmity and as per the FIR the petitioner was on a motorcycle when he was intercepted by the Investigating Officer, who confiscated 70 grams of intoxicant powder from the

toolbox of the said motorcycle. He also submitted that in the State of Punjab, for the purpose of fulfilment of the target of lodging of FIRs, false implications are being done. He further submitted that there can be no check in this regard and the petitioner, who is a young boy of the age of 20 years and is a student, his entire career will be jeopardized in case his custody is perpetuated and he is not released on regular bail. He further submitted that even otherwise also, the alleged confiscated quantity is 70 grams of intoxicant powder, whereas the commercial quantity under the NDPS Act is 50 grams and therefore, it is slightly higher than the commercial quantity. He further submitted that the investigation of the case has been completed by the police and thereafter, challan has also been presented before the competent Court and considering the antecedents of the petitioner, which are totally clean and also considering the fact that the alleged confiscated quantity is marginally higher than the commercial quantity and in order to save his career, he may be considered for the grant of regular bail and the bar contained under Section 37 of the NDPS Act will not apply to the petitioner considering the aforesaid facts and circumstances of the present case.

3. On the other hand, Mr. Gurdarshan Singh Sidhu, AAG, Punjab submitted that it is correct that the petitioner is in custody for about 9 months and 2 days and the investigation of the case has already been completed. He further submitted that since the recovered quantity from the toolbox of the motorcycle, which the petitioner was riding falls in the category of commercial quantity being marginally higher, the bar contained under Section 37 of the NDPS Act will apply to the petitioner.

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

5. The petitioner is in custody for about 9 months and 2 days and he is stated to be not involved in any other case and has clean antecedents. During the course of arguments, it was also brought to the notice of this Court that one of the co-accused, namely, Gulab Singh has already been extended the benefit of regular bail by this Court vide Annexure P-3 on 15.09.2023 although his name was nominated on the basis of disclosure statement of the present petitioner and in view of the judgment of Hon'ble Supreme Court in *Tofan Singh versus State of Tamil Nadu, 2021 (4) SCC 1*, he was granted bail. The petitioner is stated to be a student of the age of 20 years and has clean antecedents and the investigation of the case has already been completed. The alleged recovery from the toolbox of the motorcycle, which the petitioner was riding is marginally higher than the commercial quantity. Learned counsel for the petitioner has alleged false implication of the petitioner due to political enmity.

6. This Court is of the view that considering the aforesaid facts and circumstances of the present case where the petitioner has clean antecedents, the recovery was not from the person of the petitioner but from the toolbox of the motorcycle, which he was riding but as per the learned counsel for the parties, the said motorcycle did not belong to the present petitioner and also the fact that it is not the case of the learned State counsel 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, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner since it is to be seen at the time of

trial as to whether the petitioner has been falsely implicated or not but for the purpose of considering the bar contained under Section 37 of the NDPS Act *prima facie* the petitioner is not guilty of offence at this stage.

7. Therefore, considering the aforesaid totality and circumstances of the present case, this Court deems it fit and proper to grant regular bail to the petitioner.

8. 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.

9. 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.

06.12.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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