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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-49389-2023 (O&M)

Date of Decision: 07.12.2023

Gurnishan Singh @ Shano Nihang

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. G.S. Bajwa, 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 grant of regular bail to the petitioner in FIR No. 41 dated 01.02.2023, under Section 21 (c) of NDPS Act, registered at Police Station Goindwal Sahib, District Tarn Taran.

2. Learned counsel for the petitioner submitted that the petitioner is in custody for 10 months and 6 days and the challan has been presented after the completion of investigation and even the charges have also been framed but till date no prosecution witness has been examined. He submitted that the story which has been put forward by the police in the present FIR is a routine, mechanical and stereotype kind of a story which is used in hundreds of such kind of FIRs in the State of Punjab. He submitted that as per the story put forward by the police, the police party saw the petitioner

and on seeing the police party, he threw the polythene bag on the ground and from the polythene bag there was a recovery of 293 grams of heroin and the commercial quantity as defined under the NDPS Act is 250 grams. He submitted that no recovery has been effected from the person of the petitioner and even as per the police the recovery was made from the ground. He further submitted that petitioner is not involved in any other case and has got clean antecedents but only because of political rivalry that in connivance with the police, the present FIR was lodged against the petitioner and in this way, he has faced incarceration for 10 months and 6 days. He submitted that bar of Section 37 of the NDPS Act will not apply to the petitioner in view of the fact that there was no recovery from the person of the petitioner and, therefore, the petitioner 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 10 months and 6 days and there was no recovery from the person of the petitioner but from the ground a packet was recovered and since it was a case of chance recovery, no notice under Section 50 of the NDPS Act was given. So far as the antecedents of the petitioner is concerned, he submitted that the petitioner is not involved in any other case. He has however submitted that even if the recovery was from the ground, the bar of Section 37 of the NDPS Act will apply.

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

5. It is a case where the petitioner has already faced incarceration for 10 months and 6 days and he is stated to be having clean antecedents and is not involved in any other case. The recovery was not from the person

of the petitioner but from the ground and as per the police, when he was seen by the police, he threw away the packet. During the course of arguments, learned counsel for the petitioner has also submitted that such sequence of events is stereotype wherein not one but hundreds of such cases are registered in the State of Punjab by copying same story. The argument raised by the learned counsel for the petitioner in this regard cannot be ignored and it does carry weight for the purpose of considering bail application. Even otherwise also the recovery was not effected from the person of the petitioner and the recovery is marginally higher than the commercial quantity. False implication cannot be ruled out but is a subject matter of trial which can be proved only by way of leading evidence. Consequently, this Court is of the view that the bar of Section 37 of the NDPS Act will not apply to the present petitioner especially when now the custody is 10 months and 6 days and charges have been framed but no prosecution witness has been examined.

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. Before parting with the order, this Court would also notice from the vernacular of the FIR that the expression Sardar has been used in the FIR which connotes religion. This Court earlier in CRM-M-50330-2021 and CRM-M-42705-2022 has taken a serious note with regard to the same not only for the State of Punjab but also for the State of Haryana. The Director General of Police, Punjab has also filed an affidavit before this Court in the aforesaid case that henceforth the same will not be done and the aforesaid affidavit was filed in the year 2022 and the present FIR has

been lodged in the year 2023. For a number of times even it was assured to the Court that such kind of things will not be repeated but the same has been repeated again. Therefore, let this order be brought to the notice of the Director General of Police, Punjab and also the SSP concerned.

9. 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.

07.12.2023

rakesh

Whether speaking : Yes/No

Whether reportable : Yes/No

(JASGURPREET SINGH PURI)

JUDGE