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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-50114-2023 (O&M)
Date of decision: 16.11.2023

Amarjeet Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. K.S. Sidhu, 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 FIR No.09 dated 21.01.2023 under Section 21 of NDPS Act and Section 25 of Arms Act, registered at Police Station Mamdot, District Ferozepur.

2. It is submitted by the learned counsel for the petitioner that the petitioner is in custody from 20.02.2023 and investigation of the case is completed and thereafter, challan has been presented and even charges have been framed. He submitted that it is a case, where the petitioner was falsely implicated in the present FIR, which was registered on the basis of secret information against 09 named accused persons including the petitioner and 10

unknown persons that there is smuggling of heroin and illegal weapons from Pakistan, which is attributable to co-accused. He submitted that the police found 02 kg of heroin, 01 pistol, 02 magazines and 12 live cartridges from the fields of one Kulwant Singh belonging to Village Sethan @ Dona Rehmat and the petitioner had nothing to do with the aforesaid fields nor had he ever visited the place, because village of the petitioner is about 10 km away from the aforesaid place. It is submitted that the petitioner is residing at a distant place and is not involved in any other case and it was only because of political enmity in the village that his name was nominated.

3. Learned counsel, in support of his arguments pertaining to false implication, submits that although name of the petitioner was mentioned in the FIR, but when the matter was thoroughly investigated by the police, then the Investigating Officer, by giving detailed reasons, exonerated the petitioner and referred to Annexure P-5 in this regard, whereby the concerned Investigating Officer had recommended that the petitioner be exonerated on the ground that there was a dispute with regard to panchayat elections and due to political enmity, his name appears to have been surfaced. It is submitted that the aforesaid recommendations of the Investigating Officer were based on facts and thorough inquiry being conducted by him and that is why, name of the petitioner was recommended to be deleted from the array of accused, but thereafter again, due to political reasons, aforesaid Investigating Officer was changed and new Investigating Officer, without formulating any reason or giving any reason for disagreeing with the recommendation of earlier

Investigating Officer, presented challan against the petitioner as well. It is submitted in this way that the petitioner is totally innocent and was arrested and has been incarcerated for about 09 months. He, however, submitted that neither any recovery was effected from the petitioner nor it is the case of the prosecution that anything was recovered from the petitioner, but everything is on papers based upon the political enmity of the petitioner with other political party, which is apparent on the face of it. It is submitted that in the light of aforesaid facts and circumstances of the case, even if recovery was made from fields of one other person Kulwant Singh, who is not arraigned as an accused and in the present case, bar under Section 37 of NDPS Act will not apply to the petitioner. He further submitted that the person, from whose fields the aforesaid quantity of heroin was recovered, has not been arraigned in the FIR, whereas the petitioner, who is having clean antecedents, has been nominated in the present FIR purely on the basis of political enmity and therefore, he may be considered for grant of regular bail.

4. On the other hand, Mr. Ramdeep Partap Singh, Sr. DAG, Punjab submitted that custody of the petitioner is 08 months and 28 days and he is having clean antecedents and is not involved in any other case. On instructions from the Investigating Officer, who is present in the Court, he submitted that no recovery was effected from the petitioner. He, however, submitted that on the basis of secret information, the petitioner was not nominated in the FIR, but thereafter challan was presented against him because subsequent Investigating Officer had come to a conclusion that so far as the present petitioner and other

accused are concerned, challan was required to be presented. He also referred to Section 37 of NDPS Act in this regard for objecting to bail to the petitioner.

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

5. The petitioner is in custody from 20.02.2023. Although custody of the petitioner is not very long but prayer of the petitioner has to be considered in the light of peculiar facts and circumstances of the present case. The person namely Kulwant Singh, from whose fields, aforesaid quantity of heroin and some ammunition was recovered, has not been arraigned as accused in the present FIR but some other persons including the petitioner have been arraigned as accused. When the investigation was conducted by the concerned Investigating Officer, as per the learned counsel for the petitioner and as per Annexure P-5, the petitioner was recommended to be exonerated and deleted from the array of accused persons because it was found that purely on the basis of political reasons, the petitioner was nominated. Challan was presented by subsequent Investigating Officer, after transfer of first Investigating Officer.

6. During the course of arguments, learned State counsel also submitted that when the petitioner was arrested, he confessed to his guilt. Such kind of confession in the police custody, is not admissible in evidence. There is no other material available with the police to connect the present petitioner with the offence except his confessional statement in police custody, which is even otherwise not admissible in evidence. Therefore, this Court is of the view that bar under Section 37 of NDPS Act will not apply to the petitioner, especially in view of the fact that no recovery was effected from the petitioner and he has

clean antecedents. The facts and circumstances of the present case would lead to infer and make a prima facie view that the petitioner is not guilty of the offence for the purpose of considering bar under Section 37 of the NDPS Act. The petitioner is also stated to be having clean antecedents and is not involved in any other case. It is not the case of learned State counsel that in case the petitioner is released on regular bail, then he can abscond from justice or may tamper with the prosecution evidence or repeat offence. Therefore, both the ingredients for making departure from the bar under Section 37 of NDPS Act remain satisfied.

6. 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.

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.

[JASGURPREET SINGH PURI]
JUDGE

16.11.2023
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No