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

CRM-M-50380-2022

Date of Decision: 11.10.2023

Mohammad Imran @ Manu

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Rahul Aggarwal, Advocate,
for the petitioner.

Mr. G.S. 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 case bearing FIR No.20 dated 06.02.2023, under Sections 22 & 29 of the NDPS Act, 1985, registered at Police Station City-II, Malerkotla, District Malerkotla.

2. It has been submitted by the learned counsel for the petitioner that the petitioner is in custody since 06.02.2023, which is more than 8 months and the investigation of the case has already been completed and thereafter, challan has also been presented but no witness has been examined till date. He further submitted that the allegation against the petitioner was that there was a recovery of 11 intoxicant vials of *Wincirex Cough Syrup*

containing 100 ml. each which was effected from a transparent packet thrown by the petitioner. He also submitted that the petitioner has been falsely implicated in the present case and as per the allegation, the petitioner had thrown away the transparent polythene carried by him on the ground and thereafter, there had been a recovery of the aforesaid contraband. He further submitted that the total weight of the aforesaid syrup would come to 1100 grams whereas the commercial quantity prescribed under the NDPS Act is 1000 grams. He submitted that in fact no recovery has been effected from the conscious possession of the petitioner because even as per the FIR, the recovery has been effected from the ground where the petitioner has allegedly thrown the transparent packet and also submitted that it was a concocted story and since no recovery has been effected from the conscious possession of the petitioner, the bar contained under Section 37 of the NDPS Act will not apply in the present case. He further submitted that the petitioner is involved in one more case under the NDPS Act but he has been granted regular bail in that case since the contraband recovered from him did not fall in the category of commercial quantity.

3. On the other hand, Mr. G.S. Sidhu, learned AAG, Punjab has stated that it is correct that the petitioner is in custody since 06.02.2023 which is more than 8 months but he opposed the grant of regular bail to the petitioner on the ground that the petitioner is involved in one more case under the NDPS Act.

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

5. It is a case where the allegations were that the police party had intercepted the petitioner, who was allegedly carrying a transparent

polythene bag but he threw it away on seeing the police party. The total quantity is little higher than the commercial quantity but for the purpose of consideration of bar contained under Section 37 of the NDPS Act, it could be seen even as per the prosecution that the recovery was not effected from the conscious possession of the petitioner but from the ground. So far as the involvement of the petitioner in other case is concerned, even as per the learned counsel for the petitioner, he is already on bail in that case. Furthermore, it is neither the case of the State nor it has been argued by the learned State counsel that in case the petitioner is released on bail, he may abscond or flee from justice or may influence the witness or may tamper with the evidence.

6. Therefore, considering the aforesaid 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.

7. 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.

11.10.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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