

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

**CRM-M-50701 of 2023
DATE OF DECISION :- 12.10.2023**

Manmohan Singh @ Bholu

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Vivek K. Thakur, 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 the grant of regular bail to the petitioner in FIR No.217 dated 19.12.2021, under Sections 15C, 29 of the NDPS Act, registered at Police Station Shahkot, District Jalandhar (Rural).

2. Learned counsel for the petitioner has submitted that the petitioner is in custody from 19.12.2021, which is almost 1 year 9 months and 22 days as on today. He has submitted that it is a case where allegation against the petitioner is that petitioner was sitting on conductor seat and other co-accused Gurpreet Singh @ Preet was driving the Canter and there had been an alleged recovery of 110 kgs of poppy husk which although falls under the category of commercial quantity but in the present case bar of Section 37 of the NDPS Act will not apply to the petitioner. By

substantiating his arguments pertaining the aforesaid bar of Section 37 of the NDPS Act, learned counsel for the petitioner submitted that petitioner has clean antecedents and is not involved in any case and he was only sitting on the passenger seat. He further submitted that the aforesaid co-accused namely Gurpreet Singh @ Preet has already been extended the benefit of bail by this Court in CRM-M-10351 of 2023 (O&M) vide judgment dated 28.8.2023 by passing a detailed order. By referring to the aforesaid order he submitted that it is a case where the prosecution after the charges were framed had failed to depose before the Court and at that point of time twice timesailable warrants were issued against the prosecution witnesses and the matter was adjourned from time to time but they did not care to depose and only one witness namely Satnam Singh was examined who was only a formal witness and had only deposited the samples with the Forensic Laboratories and one Kashmir Singh was examined who was the complainant who had seen the petitioner and had informed the senior police officer. Learned counsel for the petitioner submitted that the aforesaid bail was granted to the co-accused by making reference to the judgments of the Hon'ble Supreme Court passed in **"Satender Kumar Antil versus Central Bureau of Investigation and another", 2022(10) SCC 51, "Mohd. Muslim @ Hussain versus State (NCT of Delhi)", 2023 AIR(SC) 1648, "Dheeraj Kumar Shukla versus The State of Uttar Pradesh" 2023 SCC online SC-918** and **"Rabi Prakash versus The State of Odisha" Special Leave to Appeal (Criminal) No.4169 of 2023** and now thus the position remains the same and rather now the total number of times the prosecution witnesses have been summoned by way ofailable warrants has risen from 12 to 14 and submitted that the petitioner is not only at the parity with the other co-

accused rather he is on a better footing and, therefore, he may be granted concession of regular bail in the present case.

3. Learned State counsel submitted that the petitioner is in custody for 1 year 9 months and 22 days and it is correct that the other co-assued who was the driver of the Canter namely Gurpreet Singh @ Preet has also been granted bail by this Court on the ground that the prosecution witnesses could not depose before the Court. However, he has submitted that now 4 witnesses have been examined. So far as the antecedents of the petitioner is concerned he has also submitted that petitioner is not involved in any other case under the NDPS Act.

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

5. The petitioner has faced incarceration for 1 year 9 months 22 days and there was alleged recovery of 110 Kgs of poppy husk from the Canter which was driven by the co-accused namely Gurpreet Singh @ Preet and the aforesaid co-accused has already been extended the benefit of bail by this Court on the ground that there had been delay in the trial on the part of the prosecution witnesses because they did not care to depose before the Court despite the fact that for about 12 times bailable warrants were issued to them. According to learned counsel for the petitioner now the number of times bailable warrants issued to the prosecution witnesses has risen from 12 to 14. This Court is of the view that the present petitioner who is having clean antecedents is not only at the parity with the other co-accused rather he is on a better footing and therefore, he is entitled for regular bail in the light of Article 21 of the Constitution of India and the bar under Section 37 of the NDPS Act will not apply to the present petitioner.

6. Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

7. 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**

12.10.2023
P.Singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No