

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

CRM-M-50699-2023

DATE OF DECISION :- 12.10.2023

GURBAX SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sandeep Kumar Passi, Advocate for the petitioner.

Mr. Ramdeep Pratap Singh, Sr. DAG, Punjab.

JASGURPREET SINGH PURI, J (ORAL)

1. The present is a second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in case FIR No. 85 dated 03.07.2022, under Section 22 of the NDPS Act (Section 29 of the NDPS added later on), registered at Police Station Lakho Ke Behram, District Ferozepur.

2. Learned counsel for the petitioner submitted that petitioner was convicted for 1 year 3 months and 7 days and thus there was an alleged recovery of 1720 tablets of Tramadol from the petitioner as per prosecution. It is further submitted that only two witnesses have been examined till date. He submitted that evenailable warrants have been issued against the prosecution witnesses.

3. On the other hand learned State counsel has stated that the present petition is not maintainable in view of the fact that the petitioner has

earlier also filed a bail petition CRM-M-4987 of 2023 before this Court and has withdrawn the same on 31.07.2023 and the present petition has been filed on 05.10.2023 just after a period of two months. He submitted that there is no change of circumstance thereafter and the present petition is not maintainable. He further submitted that even otherwise also the recovery from the petitioner was falling in the category of commercial quantity and there is a bar under Section 37 of the NDPS Act and there is no ground available to the petitioner for making a departure from the aforesaid bar, therefore, he does not deserve the concession of regular bail.

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

5. The present bail petition deserved to be dismissed on two grounds. Firstly earlier the petitioner had filed a bail petition before this Court and he had withdrawn the same on 31.07.2023 vide Annexure-P-7 and thus immediately after a period of two months only he has filed the present petition without any change of circumstance and, therefore, on this ground itself the petition is liable to be dismissed. Secondly the recovery from the petitioner falls under the category of commercial quantity i.e. 1720 tablets of Tramadol.

6. Learned counsel for the petitioner has not been able to make out the case for making a departure from the aforesaid bar. The Hon'ble Supreme Court in '*State of Kerala and others versus Rajesh and others*' (2020) 12 SCC 122 has observed as under :-

“19.The scheme of [Section 37](#) reveals that the exercise of power to grant bail is not only subject to the limitations contained under [Section 439 CrPC](#), but is also subject to the limitation placed by [Section 37](#) which commences with non-obstante clause. The operative part of the said section is in the negative

form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.”

7. In view of the aforesaid facts and circumstances no ground is made out to grant regular bail to the petitioner
8. Consequently, the present petition is dismissed.
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.

(JASGURPREET SINGH PURI)
JUDGE

12.10.2023

P.Singh/Jatin

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No