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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-51455-2023
Date of decision: 16.10.2023

RAJINDER SINGH @ VICKY

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. O. P. Kamboj, Advocate
for the petitioner.

Mr. Gurdarshan Singh Sidhu, AAG, 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 FIR No.72 dated 12.06.2022, under Sections 15 and 29 of the NDPS Act, registered at Police Station Lohian, District Jalandhar Rural, Punjab.

2. Learned counsel for the petitioner submitted that the petitioner is in custody for 1 year, 4 months and 2 days and it is a case where charges were framed on 24.03.2023 and almost seven months have elapsed and not even a single prosecution witness has been examined. He further submitted that the petitioner has clean antecedents and he is not involved in any other case and has been falsely implicated in the present case. He further submitted that the petitioner was only a driver of the truck and there was no recovery from the

possession of the petitioner but it was only from the body of the truck and even otherwise also the alleged recovery in the present case was 55 kgs. and 200 grams of *poppy husk* along with a polythene bag, which is marginally higher than the commercial quantity as defined under the NDPS Act. He also submitted that after the petitioner was arrested, investigation was carried on and thereafter charges were framed on 24.03.2023 and no endeavor was made by the prosecution witnesses to depose before the learned trial Court and the petitioner has clean antecedents and the total quantity recovered from him being marginally higher, he may be considered for grant of regular bail and considering the aforesaid facts and circumstances, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner in the light of Article 21 of the Constitution of India.

3. On the other hand, Mr. Gurdarshan Singh Sidhu, AAG, Punjab submitted that it is correct that the petitioner is in custody for 1 year, 4 months and 2 days and total quantity recovered along with the polythene bag was 55 kgs. and 200 grams of *poppy husk*. He further submitted that it is also correct that no prosecution witness has been examined till date.

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

5. The total custody of the petitioner comes out to be 1 year, 4 months and 2 days and the allegations were with regard to recovery of 55 kgs. and 200 grams of *poppy husk* along with the polythene bag from the body of the truck which the petitioner was driving but not from the person of the petitioner. There are other co-accused also in the present case who were also in the said truck. The petitioner is stated to be not involved in any other case and having

clean antecedents. There is no justification coming forth from the learned State counsel as to why for about seven months after the framing of the charges, not even a single prosecution witness has been examined and the net result of the same is that the petitioner had to face incarceration for 1 year, 4 months and 2 days.

6. Therefore, considering the aforesaid totality and circumstances of the present case, this Court is of the view that the bar contained under Section 37 of the NDPS Act will not apply to the petitioner in the light of Article 21 of the Constitution of India.

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.

16.10.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No