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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-52036-2023 (O&M)

Date of decision: 18.10.2023

Neeraj Saini

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Munish Puri, Advocate, for the petitioner.

Mr. Harsimar Singh Sitta, 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.212 dated 10.10.2020, under Sections 21 and 22 of the NDPS Act and Sections 379 and 411 IPC, registered at Police Station Division No.2, District Pathankot.
2. Learned counsel for the petitioner submitted that the petitioner is in custody from 10.10.2020 which is more than 3 years and only one witness has been examined till date despite the fact that the charges were framed on 17.10.2022. He submitted that as per the allegations the police had intercepted three persons including the petitioner and there was an alleged recovery of 696 tablets of Tramadol from the petitioner which falls in the category of commercial quantity but the bar of Section 37 of the NDPS Act will not apply to the present petitioner. He submitted that the petitioner is involved in three

more cases which are not pertaining to the NDPS Act but are pertaining to Section 379 IPC.

3. He has submitted that the reason as to why the bar of Section 37 of the NDPS Act will not apply to the petitioner is that when the police had apprehended all the three persons including the petitioner, then the police officer made an offer under Section 50 of the NDPS Act which was a defective offer. As per the proceedings attached with the FIR itself, it has been so stated that the ASI had given an offer to all the three persons jointly and it was a joint offer which is not permissible and apart from the above, the offer which was made on the face of it was that the petitioner and the other accused persons had a right to be searched from the ASI himself or from a Gazetted Officer or a Magistrate and in this way the offer was made pertaining to three persons including the ASI who had apprehended the petitioner and other accused and therefore, there was a total violation of Section 50 of the NDPS Act and this issue has been discussed in detail in judgment of Supreme Court in **State of Rajasthan versus Parmanand and another, 2014(2) RCR (Criminal) 40** and it was held that in such a case where such like offer is made which is defective on the face of it, then the entire recovery gets vitiated. He submitted that in view of the aforesaid position in the present case as well the recovery gets vitiated and therefore, the petitioner is entitled for the grant of regular bail apart from the fact that he has already faced incarceration for 3 years.

3. On the other hand, Mr. Harsimar Singh Sitta, DAG, Punjab has submitted that it is correct that the petitioner is in custody for 3 years and only one witness has been examined. He has however submitted that the petitioner is

involved in five more cases under the provisions of Section 379 IPC but not under the NDPS Act.

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

5. It is a case where the petitioner has already faced incarceration for 3 years and as per the learned counsel for the parties, only one witness has been examined till date. The petitioner is stated to be not involved in any other case under the NDPS Act but in five cases under Section 379 IPC as per learned State counsel. However for the purpose of considering the bar of Section 37 of the NDPS Act, this Court would therefore consider the offer which was made to the petitioner and the other co-accused as per the FIR and proceedings itself. A perusal of the same would show that the police officer had made an offer to get the accused searched from he himself or from a Gazetted Officer or a Magistrate. It appears that *prima facie* on the face of it the offer was defective in nature especially in view of the judgment of the Hon'ble Supreme Court in **State of Rajasthan versus Parmanand and another(Supra)**. As per Section 50 of the NDPS Act, an offer can be made only pertaining to two persons i.e. a Gazetted Officer or a Magistrate and no third offer can be added and in case any third offer especially by the person who has apprehended, then it is defective in nature. Therefore, for the purpose of considering the bar of Section 37 of the NDPS Act, the same will not apply in view of the aforesaid circumstances in view of *prima facie* violation of Section 50 of the NDPS Act.

6. In view of the aforesaid facts and circumstances, 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 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 merits of the case and is meant for the purpose of deciding the present petition only.

18.10.2023
rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No