

221

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-54538-2022 (O&M)

Date of Decision: 29.11.2023

Jagsir Singh

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. J.K. Singla, Advocate, for the petitioner.

Mr. Ramdeep Partap Singh, Senior 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. 154 dated 13.09.2022, under Section 22 of NDPS Act, registered at Police Station City Khanna-II, District Ludhiana.

3. Learned counsel for the petitioner submitted that the petitioner is in custody for 1 year, 2 months and 13 days and as per the allegations, the petitioner was coming on feet and was carrying a bag and when the police party saw him, he became preplexed and he threw away the bag on the floor and thereafter from the bag there was a recovery of 34 vials of Corex Cough Syrup and 37 strips each containing 10 tablets of Carisoprodol. He submitted that the petitioner has been falsely implicated in the present case and he is not involved in any other case and is having clean antecedents and

it was only due to political enmity that the police has falsely implicated the petitioner. He submitted that there was no recovery from the possession of the petitioner and it was from the ground and the entire story has been concocted by the police. He further submitted that the charges in the present case were framed on 09.05.2023 and has also supplied photocopy of the zimni orders passed by the learned trial Court thereafter. He submitted that after the charges have been framed on 09.05.2023, the matter was adjourned for more than three times and every time the prosecution witnesses were summoned but they failed to appear. He further submitted that especially in the cases of NDPS matter where the police officials who are stated to have apprehended the accused person are the material prosecution witnesses and after the framing of the charges it is the duty of those police officials to depose before the Court whereas repeated summons etc. being issued to the prosecution witnesses which would go into show that the petitioner has been falsely implicated in the present case because they do not wish to depose before the Court as per the orders passed by the learned trial Court. He further submitted that petitioner is not involved in any other case and has got clean antecedents and has already faced incarceration for 1 year, 2 months and 13 days and, therefore, he may be considered for the grant of regular bail and even though allegedly the quantity is falling in the category of commercial quantity but the bar of Section 37 of the NDPS Act will not apply to the petitioner in view of the peculiar facts and circumstances and in the light of 21 of the Constitution of India. He has also relied upon a judgment of the Hon'ble Supreme Court in *Satender Kumar Antil Versus Central Bureau of Investigation and another* [2022 (10) SCC 51] in this regard.

4. On the other hand, Mr. Ramdeep Partap Singh, Senior DAG, Punjab has submitted that it is correct that the petitioner is in custody for 1 year, 2 months and 13 days and he has also filed a custody certificate which is taken on record. He also while referring to the custody certificate submitted that the petitioner is not involved in any other case. He has however opposed the grant of regular bail to the petitioner on the ground that the confiscated quantity falls in the category of commercial quantity and, therefore, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

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

6. It is a case where the petitioner is stated to be not involved in any other case and as per both the learned counsel for the parties, he has already faced incarceration for 1 year, 2 months and 13 days. The allegations in the present case as per the FIR were that the petitioner was carrying a bag which he has thrown on the ground and from that bag there was recovery of contraband. There was no recovery from the person of the petitioner. Be that as it may, the charges were framed on 09.05.2023 and thereafter about four times the matter was adjourned by the learned trial Court for summoning of the prosecution witnesses who had set the criminal law into motion. There is no justification coming forth from the learned State counsel as to why the prosecution witnesses did not care to depose before the Court and why the trial Court had to summon them repeatedly. The delay in the trial appears to have been caused at the hands of the prosecution and not at the hands of the petitioner. This Court therefore would consider the custody of the petitioner and the stage of the trial in the light of Section 37 of the NDPS Act. Learned counsel for the petitioner has submitted that he has been falsely implicated because of political enmity.

Although this Court does not wish to go into the merits of the aforesaid

allegations but considering the aforesaid facts and circumstances and in the light of the judgment of Hon'ble Supreme Court in *Satender Kumar Antil Versus Central Bureau of Investigation and another (Supra)*, this Court is of the view that the bar of Section 37 of the NDPS Act will not apply to the petitioner in the light of Article 21 of the Constitution of India and in the light of the aforesaid judgment. Furthermore, it is not the case of the State counsel that in case the petitioner is released on bail, then he may repeat the offence.

7. Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned, if not required in any other case.

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.

29.11.2023

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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