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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-53561-2023
Decided on: 16.11.2023

Mandeep Singh

.... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Loveleen Nanda, Advocate
for the petitioner.

Mr. Ramdeep Partap Singh, Sr. 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 case FIR No.399 dated 11.09.2022, under Sections 22, 29, 61 & 85 of the NDPS Act, registered at Police Station Zirakpur, District SAS Nagar, Mohali.

2. Learned counsel for the petitioner submitted that the petitioner is in custody from 1 year 1 month and 29 days and the investigation of the case has already been completed and thereafter, charges have also been framed but till date no prosecution witness has been examined. He further submitted that as per the prosecution story and as per the FIR, the police apprehended two persons i.e. the petitioner, namely, Mandeep Singh and the co-accused, namely, Gurwinder Singh and there has been an alleged recovery of 30,000 tablets containing salt of *Diphenoxylate Hydrochloride* and 2220 tablets containing the salt of *Alprazolam*. He submitted that in fact the petitioner had

got no connection with the aforesaid co-accused and the aforesaid recovery was from a bag which was carried by the other co-accused, namely, Gurwinder Singh and not by the petitioner and the petitioner has been falsely implicated in the present case without any reasons. He also submitted that the petitioner has clean antecedents and is not involved in any other case. He further referred to the statement made under Section 161 Cr.P.C. by Ashwani Kumar, who is the informant/complainant wherein he himself stated before the Court that the recovery was effected from the bag which was on the shoulder of the co-accused and not the petitioner and therefore, so far as the present petitioner is concerned, he deserves the concession of regular bail and the bar contained under Section 37 of the NDPS Act will not apply to the petitioner.

3. On the other hand, Mr. Ramdeep Partap Singh, learned Sr. DAG, Punjab, submitted that it is correct that the petitioner is in custody from 1 year 1 month and 29 days and even as per prosecution, the recovery was from the other co-accused and not from the petitioner. He further submitted that it is also correct that the petitioner is not involved in any other case and has clean antecedents.

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

5. It is a case where the petitioner has faced incarceration for 1 year 1 month and 29 days and no witness has been examined till date although charges have been framed by the trial Court. For the purpose of considering the bar contained under Section 37 of the NDPS Act, this Court would consider the facts and circumstances of the present case based upon the prosecution story itself. As per the allegations, the police apprehended two persons, i.e., the petitioner and one co-accused, namely, Gurwinder Singh and

as per the prosecution story itself, they were on feet but the recovery has been effected from a bag which was on the shoulder of the aforesaid co-accused. The petitioner is stated to be not involved in any other case and has clean antecedents and no recovery was effected from the conscious possession of the petitioner and since they were on feet, at this stage, it cannot be said whether there was meeting of mind between them or not, therefore, this Court is of the view that the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner and he deserves the concession of regular bail.

6. Consequently, the present petition is allowed and the petitioner is ordered to be released on regular bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

7. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant only for the purpose of decision of present petition.

16.11.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |