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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-57163-2022
Date of decision: 23.08.2023

SANDEEP SINGH @ SUNNY

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. J. S. Dadwal, 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 the grant of regular bail to the petitioner in FIR No.117 dated 09.06.2022, under Sections 22 and 22-C of the NDPS Act, registered at Police Station Special Task Force, STF Wing, Phase-IV, Mohali, Punjab.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody from 09.06.2022, which is almost 1 year and 2 months. He submitted that the charges in the present case were framed on 03.02.2023 and more than six months have elapsed and not even a single prosecution witness has been examined. He further submitted that the petitioner has no criminal background and he is not involved in any other case and in the present case, the

contraband was planted upon the petitioner due to political rivalry. Further for the purpose of substantiating his statement pertaining to false implication of the petitioner, learned counsel for the petitioner referred to the challan which was presented before the Court under Section 173 Cr.P.C. (Annexure P-2), wherein the batch number of the alleged recovery of 490 intoxicating tablets has been so provided. He further submitted that so far as the recovery of the aforesaid tablets are concerned, the same are not covered within the purview of the NDPS Act. He further referred to the FSL report (Annexure P-3), wherein no batch number was so mentioned. He further submitted that even if assumingly the FSL has omitted not to write the batch number but such batch number was not so mentioned in form No.29 also and he has supplied a copy of form No.29 in Court today and a photocopy of the same is taken on record as Mark 'X'. He further submitted that there is such a major discrepancy between the report which has been presented to the Court and their own document which is form No.29 and also substantiated by the fact that no such batch number has been recorded in the FSL report. He further submitted that it is not the case that the petitioner is a habitual offender but it is a case where he has no criminal background and he is not involved in any other case and it is because of political rivalry that he has been implicated in the present case. He further submitted that be that as it may, even otherwise also more than six months have elapsed after the framing of the charges and not even a single prosecution witness has been examined and therefore petitioner had to face incarceration for about 1 year and 2 months for no fault of his.

3. On the other hand, Mr. Ramdeep Partap Singh, Senior DAG, Punjab has filed the custody certificate of the petitioner in Court today and the same is taken on record. As per the custody certificate filed, the petitioner is in custody for 1 year 2 months and 12 days and he is not involved in any other case. He submitted that so far as the recovery of aforesaid intoxicant tablets from the petitioner is concerned, the same does not fall within the domain of NDPS Act but so far as the recovery of 21 vials of Wincirex Cough Syrup 100 ML is concerned, it falls within the domain of NDPS Act since it contains salt Chlorpheniramine Maleate and Codeine Phosphate and the quantity is a commercial quantity and therefore the petitioner is not entitled for grant of regular bail. He further submitted that mere fact that the batch number was not mentioned in form No.29 or in forensic report would not necessarily mean that the petitioner was falsely implicated.

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

5. The petitioner had already faced incarceration for about 1 year 2 months and 12 days as per the custody certificate filed by the State in Court today. Admittedly, he has no criminal background and he is not involved in any other case. More than six months have elapsed after the framing of the charges but not even a single prosecution witness has been examined as per learned counsel for the parties. The non mentioning of the batch number in form No.29 and in the FSL report despite the fact that batch number of the alleged confiscated Wincirex Cough Syrup was mentioned in the challan would lead this Court to have at least a *prima facie* reason to believe that the petitioner is not guilty of offence. This Court does not wish to make any observation on the

merits but it is only for the purpose of considering the effect of Section 37 of the NDPS Act that the aforesaid discrepancy would be a relevant factor for drawing an inference and have reasons to believe in this regard. So far as the second ingredient for making a departure from the bar contained under Section 37 of the NDPS Act is concerned, admittedly the petitioner is not involved in any other case nor it is the submission of the learned State counsel that in case the petitioner is released on bail, then he may influence any witness or may tamper with evidence or may flee from justice.

6. Therefore, considering the aforesaid totality and circumstances of the case and also considering the custody of the petitioner, 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 the merits of the case and is meant for the purpose of deciding the present petition only.

23.08.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No