

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-56705-2022 (O&M)

Date of Decision: 10.01.2023

Om Parkash @ Omi

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. M.S. Saini, Advocate, for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

The present is a fourth petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.0130 dated 06.07.2021 under Sections 21 and 22 of NDPS Act, registered at Police Station City Hoshiarpur, District Hoshiarpur.

Learned counsel for the petitioner has submitted that the petitioner was arrested on 06.07.2021 and as per the allegation, there was alleged recovery of 195 grams of intoxicant powder from the petitioner and apart from the above, there was alleged recovery of 15 grams of herion and 210 grams of intoxicant powder from the co-accused. He submitted that thereafter the petitioner was admitted to interim bail in view of the fact that the FSL report has not been received and thereafter he had already surrendered before the police on the receipt of FSL report which found the intoxicant powder to be

containing heroin. He further submitted that now the total custody of the petitioner is 4 months and 5 days and so far as the present petitioner is concerned, the recovery is pertaining to a quantity which does not fall in the category of commercial quantity under the NDPS Act. To substantiate his argument, he referred to the charges which were framed against the petitioner vide Annexure P-2 whereby so far as the present petitioner is concerned, the charges were pertaining only to 195 grams of heroin qua the present petitioner and there is no other charge against the petitioner under the provisions of the NDPS Act and therefore, so far as the present petitioner is concerned, he is being charged only qua the quantity which does not fall under the commercial quantity and therefore, the bar contained under Section 37 of the NDPS Act will not apply in the present case. He further submitted that apart from the above, in the present case the learned trial Court framed the charges vide Annexure P-2 against the petitioner and the co-accused on 20.01.2022 and almost one year has elapsed but no prosecution witness has been examined till date. However, in the meantime since the charges against the other co-accused were pertaining to commercial quantity, the same were amended in the month of November, 2022. So far as the default on the part of the prosecution is concerned, the same is without any justification as to what prevented the prosecution to depose before the Court for a long period of one year after the framing of the charges. He further submitted that in fact the present case was planted upon the petitioner and he has been falsely implicated and he is not involved in any other case under the NDPS Act, although he is involved in some other cases under the IPC. He further submitted that in view of the aforesaid facts and circumstances, he may be considered for the grant of regular bail.

On the other hand, Ms. Akshita Chauhan, learned Deputy Advocate General, Punjab has submitted that it is correct that the petitioner was arrested on 06.07.2021 and he was granted interim bail and thereafter he had surrendered before the police authorities and his total custody is of 4 months and 5 days. She has however submitted that the petitioner had surrendered late before the Court after the receipt of the FSL report. So far as the pendency of any other case under the NDPS Act is concerned, she submitted that it is correct that the petitioner is not involved in any other case under the NDPS Act but he is involved in number of other cases under the provisions of the IPC.

I have heard the learned counsel for the parties.

The petitioner has faced incarceration for 4 months and 5 days after excluding the period of interim bail granted to the petitioner by this Court. So far as the argument raised by the learned counsel for the State that the petitioner had surrendered late before this Court after he was granted interim and FSL report was received, on a query being raised to the learned State counsel as to whether after the receipt of the FSL report the police had informed the petitioner with regard to the same, she was not able to answer the the same even after seeking instructions from the official who is present in the Court. It was specifically directed by this Court while granting interim bail that after the receipt of the FSL report, it shall be the duty of the police to inform the petitioner. Be that as it be, a perusal of the charges framed against the petitioner would show that the charges against the petitioner were pertaining to 195 grams of heroin which does not fall in the category of commercial quantity. The charges were framed about one year ago and as per learned counsel for the parties, no witness has been examined till date. The

criminal law is set into motion by the police authorities and in the NDPS matters most of the witnesses are the official witnesses except when some of the witnesses are independent witnesses or some other such kind of witnesses but there is no justification coming forth from the State as to what prevented the police officials to have not deposed before the trial Court for a long period of one year after the framing of charges. Apart from the above, the quantity qua the petitioner does not fall in the category of commercial quantity under the NDPS Act. Therefore, the bar contained under Section 37 of the NDPS Act will not apply in the present case.

In view of the aforesaid facts and circumstances, this Court deems it fit and proper to grant regular bail to the petitioner.

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.

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.

10.01.2023

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)

JUDGE

: Yes/No
: Yes/No