

[239] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-55637-2023
Date of Decision :14.11.2023

Kawaljit Singh ...Petitioner

versus

State of PunjabRespondent

Coram : **HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present : Mr. Amardeep Singh, Advocate for the petitioner.
Mr. G.S. Sidhu, Asstt. AG, 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.355 dated 19.09.2022, under Sections 22, 23(c) of NDPS Act, 1985 (Section 23(c) NDPS Act deleted later on), registered at Police Station Goindwal Sahib, District Tarn Taran.

[2] It has been submitted by learned counsel for the petitioner that he is in custody from 19.09.2022, which is more than 1 year and 1 month and the petitioner is not involved in any other case and has clean antecedents. He further submitted that as per the allegations against the petitioner, he was living in a rented accommodation which was owned by a doctor and as he wanted the petitioner to vacate the aforesaid house that is why there was a dispute going on between the petitioner and the aforesaid lessor, who is a doctor. He further submitted that the aforesaid doctor belongs to Aam Aadmi Party which is the ruling party in the State

with regard to the aforesaid confiscation of contraband by the AAP workers which was handed over to the police. He submitted that however when the witnesses stepped into the witness box, who were the persons, who had allegedly opened the door, it was so stated by them that at the spot of occurrence the police was called and two police officers having one star were present at the time of confiscation and, therefore, it is a totally concocted and contradictory story. He further submitted that even otherwise also the aforesaid workers have no business to recover anything from the petitioner and the petitioner is of the age of 61 years and he is not having any criminal background and was targeted only because of the aforesaid reason that the doctor wanted the petitioner to vacate the premises and the aforesaid doctor belongs to Aam Aadmi Party, which is the ruling party. He further submitted that 4 witnesses out of 16 witnesses have already been examined and considering the aforesaid facts and circumstances, the petitioner may be considered for grant of the regular bail.

[3] On the other hand, learned State Counsel has submitted that there was a recovery of 3000 tablets of Diphenoxylate having weight of 205.86 grams and 220 loose tablets having salt of Alprazolam having weight of 36.3 grams which falls in the category of commercial quantity. So far as the custody of the petitioner is concerned, he has not disputed the same and he has also not disputed that the petitioner is not involved in any other case and has clean antecedents and he is not a habitual offender. However, he has submitted that since the recovered quantity

falls in the category of commercial quantity, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

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

[5] The petitioner has already faced incarceration for 01 year and 01 month and now 04 witnesses have already been examined. Since the alleged recovery in the present case falls in the category of commercial quantity, therefore, this Court will consider the prayer of the petitioner in the light of Section 37 of the NDPS Act.

[6] Learned counsel for the petitioner has referred to the various statements and depositions made by the prosecution witnesses and has also referred to the contents of the FIR and pointed out various major discrepancies in the same. The petitioner is stated to be not involved in any other case. The aforesaid discrepancies do go into the root of the matter and, therefore, considering the aforesaid facts and circumstances and the fact that the petitioner has already faced incarceration for 01 year and 01 month, this Court is of the view that considering the aforesaid discrepancies as pointed out by learned counsel for the petitioner, the bar of Section 37 of the NDPS Act will not apply to the present case. This Court is *prima facie* satisfied at this stage, only for the purpose of considering the grant of bail that the petitioner is not guilty of offence. Furthermore, it is not the case 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 especially in view of the fact that he is not involved in any other case. Therefore, this Court is

of the view that for the purpose of considering the bar of Section 37 of the NDPS Act, both the ingredients for making a departure from the aforesaid bar remain satisfied.

[7] Therefore, considering the aforesaid facts and circumstances, this Court deems it fit and proper to grant regular bail to the petitioner.

[8] 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.

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

(JASGURPREET SINGH PURI)
JUDGE

14.11.2023
'Rajneesh'

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