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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-58388-2023 (O&M)

Date of Decision: 08.12.2023

Tejinder Singh

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. R.K. Saini, Advocate, for the petitioner.

Mr. Gurdarshan Singh Sidhu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a third petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No. 223 dated 15.12.2021, under Sections 21-C, 25 and 29 of NDPS Act, registered at Police Station STF, SAS Nagar, Mohali.

2. Learned counsel for the petitioner submitted that the petitioner is in custody from 15.12.2021 which is about 2 years and submitted that it is a successive bail petition filed by the petitioner since earlier bail petition was dismissed on 23.03.2023 by this Court on the ground that the petitioner was not able to make out any ground for making a departure from the bar contained under Section 37 of the NDPS Act. He submitted that thereafter the other similarly situated co-accused namely, Lakhwinder Singh @ Lucky

also preferred a bail petition before this Court and vide Annexure P-5, the same has been allowed by this Court on 03.11.2023 and so far as the role of the present petitioner is concerned, the same was similar to that of the aforesaid Lakhwinder Singh @ Lucky because the petitioner was also passenger in the car and the aforesaid Lakhwinder Singh @ Lucky was also sitting in the car. He submitted that the aforesaid Lakhwinder Singh @ Lucky has been granted bail on the ground that there has been long incarceration and after the framing of the charges on 03.08.2022 not even a single prosecution witness has been examined and this Court while referring to the judgments of the Hon'ble Supreme Court in *Satender Kumar Antil Versus Central Bureau of Investigation and another* [2022 (10) SCC 51], *Mohd. Muslim @ Hussain Versus State (NCT of Delhi)* [2023 AIR (SC) 1648], *Dheeraj Kumar Shukla v. The State of Uttar Pradesh, 2023 SCC Online SC 918* and *Rabi Prakash Versus State of Odisha, Special Leave to Appeal (Crl.) No.4169 of 2023* had allowed the bail of the aforesaid co-accused. He submitted that so far as the present petitioner is concerned, he is rather on a better footing because now his custody is about 2 years and the time gap between the framing of the charges till today is 1 year and 4 months and till date not even a single prosecution witness has been examined and, therefore, he is also at parity with the aforesaid co-accused. He also submitted that the bar of Section 37 of the NDPS Act will not apply in view of the aforesaid long custody and the stage of the trial and also in view of the fact that the petitioner is at parity with the aforesaid co-accused. He submitted that the petitioner is not involved in any other case and has got clean antecedents and, therefore, the petitioner may be considered for the grant of regular bail.

3. On the other hand, Mr. Gurdarshan Singh Sidhu, learned AAG, Punjab has submitted that it is correct that the petitioner is in custody for about 2 years and it is also correct that the petitioner is at parity with the other co-accused namely, Lakhwinder Singh @ Lucky, who has been granted bail by this Court vide Annexure P-5. He submitted that after the framing of the charges on 03.08.2022 not even a single prosecution witness has been examined and the petitioner is not involved in any other case.

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

5. This Court earlier dismissed the bail petition of the petitioner on 23.03.2023. However, now the custody of the petitioner comes out to be about 2 years. On 03.11.2023, this Court had decided one bail petition of the co-accused vide Annexure P-5 and allowed the bail of the co-accused namely, Lakhwinder Singh @ Lucky on the ground of long custody and the stage of the trial whereby not even a single prosecution witness was examined after the framing of the charges on 03.08.2022 and, therefore, also observed that the bar Section 37 of the NDPS Act will not apply in the light of Article 21 of the Constitution of India and also the aforesaid judgments of the Hon'ble Supreme Court. This Court is of the view that the present petitioner is rather on a better footing than the aforesaid co-accused and, therefore, on the same analogy, he also deserves the concession of regular bail and particularly in view of the fact that he is having clean antecedents.

6. 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.

7. 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.

08.12.2023

rakesh

Whether speaking : Yes/No

Whether reportable : Yes/No

(JASGURPREET SINGH PURI)

JUDGE