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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-59829-2023 (O&M)

Date of Decision:14.12.2023

Gurpreet Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Ms. Satinder Kaur, Advocate for the petitioner.

Mr. G.S. Sidhu, Assistant A.G. 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 case bearing FIR No.257 dated 09.11.2019 under Section 21 of Narcotic Drugs and Psychotropic Substances Act, 1985 and Sections 379, 411 and 473 of IPC added later on, registered at Police Station Civil Lines, District Bathinda, Punjab.

2. Learned counsel for the petitioner submitted that the petitioner is in custody from 09.11.2019, which is more than 04 years and 01 month and petitioner is not involved in any other case under the NDPS Act but he is involved in four more cases under the IPC. Learned counsel for the petitioner submitted that as per the allegations the present petitioner alongwith the other co-accused namely Resham Singh @ Reshu was apprehended alongwith a recovery of 300 grams of *Tramadol* which is marginally higher than the commercial quantity as so defined under the provisions of NDPS Act. Learned counsel for the petitioner further

submitted that earlier also the petitioner had filed regular bail petition before this Court bearing case No.CRM-M-16212-2022, which was disposed of on 04.05.2023 by a Coordinate Bench of this Court with a direction to the learned trial Court to expedite the trial and conclude the same at the earliest as per law. She also submitted that thereafter about 07 months have been elapsed but the trial has not progressed properly and now only 14 out of total 33 prosecution witnesses have been examined despite the fact that categorical direction was issued by this Court. Learned counsel further asserted that on this ground as well the other co-accused namely Resham Singh @ Reshu, filed a petition for grant of regular bail, which was allowed vide Annexure P-2 on 04.10.2023 and at that point of time 13 witnesses out of total 33 prosecution witnesses were examined and now only one more witness has been examined i.e. total 14 prosecution witnesses have been examined till date. Learned counsel for the petitioner further submitted that the delay in the trial has not been occasioned because of any fault of the petitioner but it is because of the prosecution witnesses who did not care to depose before the learned trial Court. She also submitted that petitioner is rather on a better footing than the aforesaid co-accused since the custody of the co-accused who had been granted regular bail was more than 03 years and 10 months and so far as the present petitioner is concerned, his custody is 04 years and 01 months. She also submitted that the other co-accused was granted bail in view of the judgement of *Hon'ble Supreme Court* in *Special Leave to Appeal (Criminal) No.6690 of 2022* titled as “*Dheeraj Kumar Shukla versus The State of Uttar Pradesh*” and *Special Leave to Appeal (Criminal) No.4169 of 2023* titled as “*Rabi Prakash versus The State of Odisha*”.

3. On the other hand, Mr.G.S. Sidhu, Assistant A.G. Punjab submitted that it is correct that the petitioner is in custody from 09.11.2019, which is more than 04 years and 01 month and till date 14 prosecution witnesses out of 33 have been examined. The parity of the present petitioner with the aforesaid co-accused has also not been disputed. Learned State counsel, however, opposed the grant of regular bail to the petitioner on the ground that bar under Section 37 of the NDPS Act will apply in the present case.

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

5. The total custody of the petitioner has come upto 04 years and 01 month. Earlier when the petitioner filed regular bail petition before this Court, then a Coordinate Bench of this Court disposed of the said petition with a direction to the learned trial Court to expedite the trial and conclude the same at the earliest and as per law. The aforesaid order was passed on 04.05.2023 but even after passing of more than 07 months, the trial has not been concluded and now only 14 witnesses out of total 33 prosecution witnesses have been examined. The aforesaid co-accused namely Resham Singh @ Reshu was granted bail by this Court in the light of Article 21 of the Constitution of India and in view of the aforesaid Hon'ble Supreme Court judgments. This Court is of the view that the petitioner is rather on a better footing than the aforesaid co-accused and considering the aforesaid facts and circumstances and the custody of the present petitioner, the bar of Section 37 of the NDPS Act will not apply to the present petitioner in the light of Article 21 of the Constitution of India.

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 only meant for the purpose of decision of the present petition.

(JASGURPREET SINGH PURI)
JUDGE

14.12.2023
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No