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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-60032-2023 (O&M)

Date of Decision: 08.12.2023

Rahul Kumar

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Harparteek Singh Sandhu, Advocate, for the petitioner.

Mr. Gurdarshan Singh Sidhu, AAG, 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 FIR No. 18 dated 19.01.2021, under Sections 21/22 of NDPS Act, 1985 (61 of 85) registered at Police Station Sadar Amritsar.

2. Learned counsel for the petitioner submitted that the petitioner is in custody for about 11 months and the investigation has already been completed and thereafter challan has been presented. He submitted that as per the allegations the petitioner was seen by the police party holding a bag in his hand to which the police party asked him with regard to what was contained in the bag. He submitted that the police party was in a private vehicle of which even number has not been disclosed as per the FIR. As per the prosecution story, the petitioner stated to the police officer that he is

having some intoxicant substance to which since the police officer who had allegedly intercepted the petitioner did not have the competence under the NDPS Act so called another officer and thereafter when another officer came, he searched the bag in which 800 capsules of Tramadol having 450 grams of weight was found. He submitted that there was a long gap between the interception of the petitioner and coming of the other police officer but did not care to issue any notice under Section 50 of the NDPS Act, although the petitioner was searched. He submitted that be that as it may, it is a case of false implication since earlier also the petitioner was falsely implicated in one case under the NDPS Act which was lodged in the same police station i.e. Police Station Sadar, Amritsar and while referring to the details of the same, he referred to para No.9 of the petition that one another FIR was registered under the NDPS Act against the petitioner in which ultimately he was found to be innocent and rather the police itself filed a cancellation report in that FIR since salt did not fall under NDPS Act and even the aforesaid cancellation report has been accepted by the learned competent Court and has also supplied a copy of the same which is taken on record as Mark-X. He submitted that the enmity with the police did not stop there and now the same police has lodged another FIR against the petitioner to further implicate the petitioner. He further submitted that in view of the aforesaid facts and circumstances, the bar of Section 37 of the NDPS Act will not apply to the petitioner and, therefore, he may be considered for the grant of regular bail.

3. On the other hand, Mr. Gurdarshan Singh Sidhu, learned AAG, Punjab submitted that it is correct that the petitioner is in custody for about 11 months and the investigation of the case has already been completed and

thereafter challan has been presented. He has however submitted that since the confiscation from the petitioner was of commercial quantity under the NDPS Act, he is not entitled for the grant of regular bail. He submitted that so far as the earlier case under the NDPS Act as stated by learned counsel for the petitioner and so stated in para No.9 of the petition is concerned, he does not have any instructions in this regard.

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

5. The case of the petitioner is that he was falsely implicated by the police of the same police station in which earlier he was implicated under the NDPS Act and thereafter cancellation report has been prepared as per the para No. 9 of the petition. The story as so stated in the FIR was that the petitioner was seen by a police party who was according to learned counsel for the petitioner travelling in a private vehicle of which number has not been disclosed, whereas the petitioner was coming on foot and having a polythene bag in his hand. The police asked him about the bag to which he allegedly said that it is having intoxicant substance and thereafter one more police officer was called on the spot which also took time. The argument raised by learned counsel for the petitioner that in such a situation notice under Section 50 of the NDPS Act ought to have been given to the petitioner carries weight. So far as the allegation pertaining to false implication is concerned, the same only can be ascertained only at the time of adducing of evidence at the time of trial. However, considering the totality of the circumstances as so argued by learned counsel for the petitioner, the bar of Section 37 of the NDPS Act will not apply to the present petitioner since the possibility of false implication cannot be ruled out and also no observation can be made at this stage. The petitioner is also

stated to be having clean antecedents except for one case under the NDPS Act in which the same police station had recommended cancellation report which was accepted. Furthermore, it is not the case of the State 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. In view of the aforesaid facts and circumstances, 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 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 merits of the case and is meant for the purpose of deciding the present petition only.

08.12.2023

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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