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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-61415-2023
Date of decision: 14.12.2023

BHUPINDER SINGH ALIAS BHINDA

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Hardeep Singh Dhindsa, Advocate
for the petitioner.

Mr. Gurdarshan Singh Sidhu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.32 dated 28.02.2021, under Sections 21, 25, 27 and 29 of the NDPS Act, registered at Police Station Special Task Force, STF Mohali, Punjab.
2. Learned counsel for the petitioner submitted that the petitioner is in custody from 28.02.2021, which is more than 2 years and 9 months. He further submitted that in the present case the allegations were that the petitioner along with other co-accused, namely, Kamaljit Singh @ Kamal were caught and there was a recovery of 2 kgs. and 17 grams of *heroin*, which falls in the category of commercial quantity under the NDPS Act but the bar contained under Section 37 of the NDPS Act will not apply to the petitioner in view of the facts and

circumstances of the present case. He also submitted that the petitioner has clean antecedents and he is not involved in any other case and it is only because of political rivalry that the present case was planted upon the petitioner. In order to further substantiate his arguments, he further submitted that charges in the present case were framed by the learned trial Court on 05.07.2022 and till date only 3 prosecution witnesses have been examined and 2 prosecution witnesses have been given up by the prosecution. He further submitted that after the framing of the charges, repeatedly summons and bailable warrants were issued against the prosecution witnesses, who are the police officials, who did not care to depose before the learned trial Court. He further submitted that even serious note was taken by the learned trial Court as to why the prosecution witnesses are not appearing before the Court for deposition. He further submitted that even the Investigating Officer of the present case has not been examined till date.

3. Learned counsel for the petitioner has brought to the notice of this Court that the aforesaid co-accused, namely, Kamaljit Singh @ Kamal also filed a regular bail petition before this Court and this Court by passing a detailed order vide Annexure P-2 allowed his bail petition on the ground of long custody and the stage of trial in view of the judgments of the Hon'ble Supreme Court. He has referred to a judgment of the Hon'ble Supreme Court in **Satender Kumar Antil versus Central Bureau of Investigation and another, [2022 (10) SCC 51]** and contended that when there is a long custody, which is not attributable to the accused and the delay has been caused by the prosecution, then Rights under Article 21 of the Constitution of India are effected. He also

referred to another judgment of Hon'ble Supreme Court in “Mohd. Muslim @ Hussain versus State (NCT of Delhi)”, 2023 AIR (SC) 1648, wherein the scope of Section 37 of the NDPS Act *vis-a-vis* Article 21 of the Constitution of India has been discussed by taking a serious view with regard to long trial. He further referred to a judgment of Hon'ble Supreme Court in “Dheeraj Kumar Shukla versus The State of Uttar Pradesh”, 2023 SCC Online SC 918 and also a judgment of Hon'ble Supreme Court in “Rabi Prakash versus The State of Odisha”, Special Leave to Appeal (Criminal) No.4169 of 2023 to contend that long custody itself is a ground for grant of bail notwithstanding the bar contained under Section 37 of the NDPS Act. He also referred to a recent judgment of Hon'ble Supreme Court in Manish Sisodia versus Central Bureau of Investigation, arising out of Special Leave Petition (Criminal) Nos.8167 and 8188 of 2023 to contend that when the trial is not proceeding for reasons not attributable to the accused, the Court, unless there are good reasons, may well be guided to exercise the power to grant bail and this would be truer where the trial would take years. He further submitted that in view of the aforesaid facts and circumstances of the present case and considering the long custody of the petitioner, he may be considered for the grant of regular bail.

4. On the other hand, Mr. Gurdarshan Singh Sidhu, AAG, Punjab submitted that it is correct that the petitioner is in custody from 28.02.2021, which is about 2 years, 9 months and 15 days and it is also correct that the petitioner has clean antecedents and he is not involved in any other case. He has however opposed the grant of regular bail to the petitioner on the ground that the recovery from the petitioner and the other co-accused was 2 kgs. and 17

grams of *heroin*, which falls in the category of commercial quantity under the NDPS Act and therefore, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act. So far as the parity of the petitioner with the aforesaid co-accused, namely, Kamaljit Singh @ Kamal, who has already been granted the concession of regular bail is concerned, he has not disputed the same.

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

6. The petitioner is stated to be in custody from 28.02.2021, which is about 2 years, 9 months and 15 days. As per the learned counsel for the parties, only 3 prosecution witnesses have been examined and 2 prosecution witnesses have been given up by the prosecution. The aforesaid co-accused, namely, Kamaljit Singh @ Kamal has already been granted the concession of regular bail by this Court while referring to the judgments of the Hon'ble Supreme Court as aforesaid on the ground of long custody. This Court is of the view that the petitioner is exactly at parity with the aforesaid co-accused, namely, Kamaljit Singh @ Kamal and particularly in view of the fact that the petitioner has clean antecedents and he is not involved in any other case.

7. Therefore, considering the aforesaid totality and circumstances of the present case, this Court is of the view that the petitioner also deserves the concession of regular bail and the bar contained under Section 37 of the NDPS Act will not apply to the petitioner in the light of Article 21 of the Constitution of India and in light of the aforesaid judgments of the Hon'ble Supreme Court and also in view of the parity of the petitioner with the aforesaid co-accused,

namely, Kamaljit Singh @ Kamal, who has already been granted the concession of regular bail by this Court vide Annexure P-2.

8. Consequently, the present petition is allowed. The petitioner shall be released on regular bail, if not required in any other case, subject to furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

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

14.12.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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