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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-714-2024
Date of decision: 28.08.2024

KULWANT SINGH @ KANTU

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. L. S. Sekhon, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG, 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.93 dated 14.06.2023, under Sections 21, 25 and 29 of the NDPS Act, registered at Police Station Dhanaula, District Barnala, Punjab.
2. Learned counsel for the petitioner submitted that the petitioner is in custody for 1 year, 2 months and 4 days and in fact in the present case, there was no recovery effected from the petitioner. He further submitted that even as per the allegations, 300 grams of *heroin* was effected from the co-accused, namely, Manbir Singh @ Mani and it was on his disclosure statement that the name of the petitioner was nominated in the present case. He further submitted that at that point of time, the petitioner was in custody in some other case under

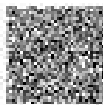


the NDPS Act and rather he was undergoing sentence in the aforesaid case and there was no connection of the petitioner with the aforesaid recovery from the co-accused but he has been falsely implicated in the present case and now even after framing of the charges on 22.12.2023, more than 8 months have elapsed and not even a single prosecution witness has been examined. He also submitted that in view of the aforesaid facts and circumstances, the petitioner may be considered for the grant of regular bail.

3. On the other hand, Mr. Rajiv Verma, DAG, Punjab submitted that it is correct that the petitioner is in custody for 1 year, 2 months and 4 days and it is also correct that the name of the petitioner was nominated on the basis of disclosure statement of co-accused but no recovery was effected from the petitioner. He further submitted that it is also correct that the petitioner was already undergoing sentence in some other case under the NDPS Act. He has however opposed the grant of regular bail to the petitioner on the ground that he has already been convicted in some other case under the NDPS Act and the recovery effected from the aforesaid co-accused falls in the category of commercial quantity, which was 300 grams of *heroin*.

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

5. The custody of the petitioner has come out to be 1 year, 2 months and 4 days and as per the learned counsels for the parties, charges in the present case were framed by the learned trial Court on 22.12.2023, which is more than 8 months ago and till date not even a single prosecution witness has been examined. As per the prosecution story, the police apprehended the aforesaid co-accused, namely, Manbir Singh @ Mani from whom there was an alleged



recovery of 300 grams of *heroin*, which undoubtedly falls in the category of commercial quantity but so far as the present petitioner is concerned, even as per the learned counsels for the parties, there was no recovery effected from the petitioner and apart from the above, he was nominated on the basis of disclosure statement of the aforesaid co-accused. As per the learned counsels for the parties, the petitioner was already in custody at the time when the present FIR was registered and he is serving the sentence for conviction under the NDPS Act.

6. After hearing learned counsels for the parties, this Court is of the considered view that considering the aforesaid custody of the petitioner, stage of the trial, the fact that no recovery was effected from the petitioner and also that more than 8 months have elapsed after the framing of the charges and not even a single prosecution witness has been examined, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner.

7. 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.

8. 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.

28.08.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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