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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-6005-2024
Date of Decision: 07.05.2024

Sunny Masih @ Sunny

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Manoj R. Sharma, Advocate,
for the petitioner.

Mr. A.S. Pannu, 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 case bearing FIR No.167 dated 06.07.2022, under Sections 21(c) of the NDPS Act, registered at Police Station Civil Line Batala, Police District Batala, District Gurdaspur.
2. Learned counsel for the petitioner submitted that the petitioner is in custody for 1 year and 10 days and as per the allegations, there was a recovery of 255 grams of *Heroin* from the petitioner which falls in the category of commercial quantity. He further submitted that the aforesaid quantity was along with the bag and therefore, it is debatable as to whether the aforesaid quantity falls in the category of commercial quantity or not,

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since the commercial quantity of *Heroin* under the NDPS Act is 250 grams. He also submitted that although the material witnesses have already been examined in the present case but considering the long custody of the petitioner, he may be considered for grant of regular bail.

3. On the other hand, Mr. A.S. Pannu, learned AAG, Punjab on instructions from ASI Jaspal Singh, stated that although it is correct that the custody of the petitioner comes out to be 1 year and 10 days but now out of total cited 12 witnesses, 5 witnesses have already been examined and 2 witnesses have been given up and even the recovery witnesses have already been examined. He further submitted that it is a case where the petitioner is a habitual offender and is involved in ten more cases, although not under the NDPS Act but those cases include Sections 302 & 307 IPC. He submitted that no ground is made out by learned counsel for the petitioner for making a departure from the bar contained under Section 37 of the NDPS Act because the recovered quantity from the petitioner falls in the category of commercial quantity. He further submitted that there is a strong apprehension that in case the petitioner is released on regular bail, then he may not only abscond or flee from justice but may also repeat offence and therefore, has prayed for dismissal of the present petition.

4. After hearing the learned counsels for the parties, this Court is of the considered view that although the custody of the petitioner is 1 year and 10 days but the trial of the case is going on because out of total 12 cited witness, 5 witnesses have already been examined and 2 witnesses have been given up. There is no ground available with the learned counsel for the



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petitioner for making a departure from the aforesaid bar contained under Section 37 of the NDPS Act. Even otherwise also, the apprehension as expressed by the learned State Counsel cannot be ignored and does carry weight. Therefore, considering the aforesaid facts and circumstances of the case, this Court does not deem it fit and proper to grant regular bail to the petitioner.

5. Consequently, finding no merit in the present petition, the same is hereby dismissed.

6. 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 present petition.

07.05.2024

(JASGURPREET SINGH PURI)
JUDGE

Bhumika

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |