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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-10414-2024
Date of decision: 24.04.2024

SURINDER SINGH @ SONU

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Ruhani Chadha, Advocate
for the petitioner.

Mr. Adeshwar Singh Pannu, 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.323 dated 09.11.2020, under Sections 22-C and 29 of the NDPS Act, registered at Police Station Kathu Nangal, District Amritsar, Punjab.
2. Learned counsel for the petitioner submitted that the petitioner is in custody for 3 years and 3 months and he is not involved in any other case under the NDPS Act and he has been falsely implicated by the police in the present case. He further submitted that it is a case where the police had apprehended two co-accused, namely, Gursahib Singh and Avtar Singh and from them there was a recovery of 11,400 intoxicant tablets and 10,200 intoxicant tablets, respectively, and both the aforesaid co-accused, who were apprehended along with the aforesaid contraband have already been released on default bail under

Section 167 (2) Cr.P.C. He further submitted that thereafter, one of the aforesaid co-accused, namely, Gursahib Singh from whom aforesaid recovery was effected disclosed the name of one co-accused, namely, Sanjeev Kumar @ Raja and three more co-accused and it was thereafter, on the basis of disclosure statement of other co-accused, who was already nominated on the basis of disclosure statement that the name of the present petitioner has cropped up and in this way, the name of the petitioner was nominated on the basis of second disclosure statement.

3. Learned counsel for the petitioner submitted that there has been no recovery from the petitioner and there is no other material available with the prosecution to connect the petitioner with the present offence. In this regard, he referred to a judgment of the Hon'ble Supreme Court in **Tofan Singh versus State of Tamil Nadu, 2021 (4) SCC 1** to contend that in the absence of any other connecting material, the disclosure statement of a co-accused is not admissible in evidence. He referred to Annexure P-9 and Annexure P-10, whereby the other co-accused, namely, Navjot Singh @ Nav and Dilpreet Singh have been extended the benefit of regular bail by this Court and by a Coordinate Bench of this Court, respectively. While referring to Annexure P-9, he submitted that one of the co-accused, namely, Navjot Singh @ Nav was also nominated on the basis of disclosure statement and he has been extended the benefit of regular bail by this Court on the ground that his name cropped up on the basis of nomination by way of a disclosure statement of co-accused. While further referring to Annexure P-9, he submitted that at that point of time when the concession of regular bail was granted to the aforesaid co-accused on 11.01.2024, only one prosecution witness was examined and charges had been

framed on 06.06.2022 and in view of the large delay even after the framing of the charges that only one prosecution witness was examined, this Court had also considered the effect of the long custody on the basis of stage of the trial and in the light of the judgments of Hon'ble Supreme Court in Satender Kumar Antil versus Central Bureau of Investigation and another, [2022 (10) SCC 51], Mohd. Muslim @ Hussain versus State (NCT of Delhi), 2023 AIR (SC) 1648, Dheeraj Kumar Shukla versus The State of Uttar Pradesh, 2023 SCC Online SC 918 and Rabi Prakash versus The State of Odisha, Special Leave to Appeal (Criminal) No.4169 of 2023 and therefore, the aforesaid co-accused was extended the benefit of regular bail by this Court.

4. Learned counsel for the petitioner also submitted that more than three months have elapsed after the enlargement of aforesaid co-accused, namely, Navjot Singh @ Nav on regular bail that the stage of the trial remains the same and still only one prosecution witness has been examined and in this way, after the framing of charges on 06.06.2022, more than 1 year and 10 months have elapsed that only one prosecution witness has been examined. He further submitted that in view of the aforesaid facts and circumstances, the petitioner was also at parity with the aforesaid co-accused, namely, Navjot Singh @ Nav. Further referring to Annexure P-10, he also submitted that one of the co-accused, namely, Dilpreet Singh, who was also apprehended along with the petitioner has already been extended the benefit of regular bail by a Coordinate Bench of this Court on 05.02.2024. He further submitted that in view of the aforesaid facts and circumstances, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner especially considering the custody and also the fact that there has been no recovery from the petitioner.

5. On the other hand, Mr. Adeshwar Singh Pannu, AAG, Punjab submitted that it is correct that the petitioner is in custody for 3 years and 3 months after the framing of the charges by the learned trial Court on 06.06.2022, only one prosecution witness has been examined. He further submitted that the petitioner is not involved in any other case under the NDPS Act but he is involved in two more cases. So far as the parity of the petitioner with the aforesaid co-accused, who have already been granted the benefit of regular bail vide Annexure P-9 and Annexure P-10 is concerned, he does not dispute the same.

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

7. The petitioner is in custody for 3 years and 3 months and he is not involved in any other case under the NDPS Act. The charges were framed by the learned trial Court on 06.06.2022 and only one prosecution witness has been examined till date despite the framing of charges more than 1 year and 10 months ago. During the course of arguments, on a query being raised to the learned State counsel as to what is the justification as to why after the framing of the charges on 06.06.2022, which is more than 1 year and 10 months ago, only one prosecution witnesses have been examined, to which he could not offer any explanation. This Court is of the considered view that the petitioner is also at parity with the aforesaid co-accused, who have already been extended the benefit of regular bail by this Court vide Annexure P-9 and Annexure P-10.

8. Therefore, considering the total custody of the petitioner, his antecedents, stage of the trial, parity of the petitioner with the aforesaid co-accused and also that no recovery was effected from the petitioner, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner in

the light of aforesaid facts and circumstances, in the light of Article 21 of the Constitution of India and also in the light of the aforesaid judgments of the Hon’ble Supreme Court.

9. 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.

10. 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.

24.04.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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