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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-12263-2024(O&M)
Date of Decision: 14.03.2024

Danvir Singh @ Danvir

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Arjun Veer Sharma, Advocate, for
Mr. Monty Goyal, 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 grant of regular bail to the petitioner in FIR No.67 dated 07.02.2022, under Sections 22/61/85 of NDPS Act, registered at Police Station Sohana, District SAS Nagar, Mohali.

2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is in custody for 2 years and 1 month and charges in the present case were framed on 10.02.2023 which is more than 1 year and only 6 witnesses out of 15 have been examined but no material witness has been examined. He submitted that only the formal witness who has deposited the sample in the Forensic Laboratory, Clerk of office of the Superintendent of Police and other formal witnesses have been examined but for the reasons best known to the prosecution none of the recovery witness or a part of the

police party has been examined. He further submitted that even as per FIR, the story as put forward by the police was that the policy party was searching the bad elements prior to the elections in the State of Punjab and they saw the petitioner on a motorcycle and there has been a recovery of 18000 tablets of Diphenoxylate from the petitioner. He submitted that it is a case where the aforesaid alleged recovery has taken place just prior to the Assembly Election and it was a case of political enmity only particularly in view of the fact that the petitioner was not involved in any other case except for one case under the NDPS Act wherein he has already been acquitted and only to settle the scores on political side that the petitioner has been falsely implicated in the present case. To substantiate his arguments, he submitted that even as per FIR itself, the recovery has been shown to be of tablets and the batch number of the same has been mentioned, whereas no such batch number is mentioned in the FSL report which is attached as Annexure P-2. He submitted that in this way it appears that some other tablets have been planted upon the petitioner and that is the reason as to why the batch number is not mentioned in the FSL report. He submitted that be that as it may, he has already faced incarceration for 2 years and 1 month and no material witness has been examined till date and considering the judgments of the 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 v. The State of Uttar Pradesh (Special Leave to Appeal (Crl.) No.(s) 6690 of 2022)* and *Rabi Prakash Versus State of Odisha, Special Leave to Appeal (Crl.) No.4169 of 2023*, he may be considered for the grant of regular bail.

3. On the other hand, Mr. Adeshwar Singh Pannu, AAG, Punjab has submitted on instructions from ASI Raj Kumar that so far as the custody of the petitioner is concerned, the same is correct and it is also correct that the charges in the present case were framed on 10.02.2023 but no material witness has been examined till date. He submitted that neither the recovery witnesses nor the witnesses who were part of the police party have been examined. He submitted that since the recovery falls in the category of commercial quantity, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

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

5. It is a case where the petitioner has already faced incarceration for 2 years and 1 month. The alleged recovery is stated to be 18000 tablets of Diphenoxylate which falls in the category of commercial quantity. However, the facts and circumstances has to be seen for the purpose of considering the effect of Section 37 of the NDPS Act in the present case. The petitioner is stated to be having clean antecedents since as per learned counsel for the parties, he was earlier involved in one case under the NDPS Act but he has since been acquitted. As per FIR, the same was lodged just before the Assembly Election in the State of Punjab. It is a categorical case of the learned counsel for the petitioner that it was only because of political enmity that the present FIR was lodged against the petitioner by planting the tablets upon him. He also referred to Annexure P-2 which is the FSL report where the batch number is not mentioned, whereas batch number of tablets finds mention in the FIR which is Annexure P-1. Although this Court does not wish to go into the effect of the aforesaid but considering the long

custody of the petitioner and the fact that more than 1 year has elapsed after the framing of the charges but no material witness has been examined, this Court is of the view that the ratio of the judgments of the Hon'ble Supreme Court as aforesaid will be applicable to the petitioner and, therefore, this Court is of the considered view that 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 also in the light of the judgments of the Hon'ble Supreme Court as aforesaid.

6. Therefore, considering the totality and circumstances of the present case, 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, if not required in any other case.

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.

14.03.2024

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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