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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-13986-2024
Date of decision: 02.05.2024

ANKIT SIHAG ALIAS GORA ALIAS ANKIT SIAG

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. P. S. Bindra, 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.183 dated 14.11.2022, under Section 22(c)/61/85 of the NDPS Act, registered at Police Station City-1, Mansa, District Mansa, Punjab.
2. Learned counsel for the petitioner submitted that the petitioner is in custody from 14.11.2022, which is more than 1 year and 5 months and charges in the present case were framed by the learned trial Court on 13.03.2023 but the trial is not progressing as only 8 prosecution witnesses have been examined. He further submitted that it is a case where the allegations against the petitioner were with regard to recovery of 4 kgs. and 928 grams of *Codeine Phosphate*, which although falls in the category of commercial quantity but considering the custody of the petitioner and the stage of the trial, he may be considered for the

grant of regular bail. He has also brought to the notice of this Court that earlier also the petitioner had filed a regular bail petition before this Court, which was dismissed on 16.11.2023 vide Annexure P-5, which is more than 5 months ago and thereafter, no progress has taken place in the trial and rather one prosecution witness has been given up by the prosecution but no prosecution witness has been examined. He further submitted that now in view of the extended custody of the petitioner, the second successive bail petition would be maintainable. He also submitted that in fact the petitioner has been falsely implicated in the present case because of the reason that earlier he was involved in one more case under the NDPS Act.

3. He has referred to a judgment of 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 affected.

4. On the other hand, Mr. Adeshwar Singh Pannu, AAG, Punjab submitted on instructions from ASI Avtar Singh that it is correct that the petitioner is in custody for more than 1 year and 5 months and after the framing of the charges on 13.03.2023, which is more than 1 year and 1 month ago, only 8 prosecution witnesses have been examined and after the dismissal of the earlier regular bail petition, no prosecution witness has been examined. He further submitted that as per the interlocutory orders, although the Presiding Officer was not holding Court but the prosecution witnesses were also not present and on one date, the petitioner was not produced before the Court and

that was the reason as to why adjournments had taken place. He also submitted that the petitioner is involved in one more case under the NDPS Act. He has however opposed the grant of regular bail to the petitioner on the ground that since the confiscated quantity 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.

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

6. It is a case where the petitioner is in custody for more than 1 year and 5 months and when he earlier filed a regular bail petition before this Court, the same was dismissed by this Court on 16.11.2023 vide Annexure P-5, which is more than 5 months ago and as per the learned counsel for the parties, no progress has taken place in the trial and rather one prosecution witness has been given up by the prosecution. It has been so stated by the learned State counsel that the prosecution witnesses did not appear because the Presiding Officer was not holding Court. The petitioner is stated to be involved in one more case under the NDPS Act but that itself cannot become a ground for denial of regular bail to the petitioner. The delay in the trial is not attributable to the petitioner in the present case and therefore, in view of the aforesaid judgment of Hon'ble Supreme Court and in the light of Article 21 of the Constitution of India, 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.

02.05.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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