

207

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-17585-2024
Decided on: 16.04.2024

Sarwan Singh

.... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Karnail Singh Ahhi, Advocate
for the petitioner.

Mr. A.S. Pannu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.59 dated 16.06.2021, under Sections 22 & 61 of the NDPS Act and Sections 21, 29, 61 & 85 of the NDPS Act added later on, registered at Police Station Ghuman, District Batala.

2. Learned counsel for the petitioner submitted that the petitioner is in custody from 6 months. He submitted that the FIR is of the year 2021, but initially the petitioner was granted interim bail by the learned Special Judge, Gurdaspur on 19.07.2021 and there was a condition in the aforesaid interim order that in case the recovered quantity comes out to be commercial quantity then the order granting regular bail to the petitioner shall automatically be considered vacated and he would be liable to surrender before the Court. He further submitted that the petitioner was not supplied any document to show

whether the recovered quantity falls in the commercial quantity or not and therefore, he moved a petition before this Court for grant of anticipatory bail which was dismissed. He submitted that thereafter the petitioner himself surrendered before the police and now his total custody comes out to be 6 months and the investigation of the case has already been completed and after the framing of the charges, two witnesses have been examined, out of which, one witness is a formal witness and another is a recovery witness.

3. Learned counsel for the petitioner further submitted that it is a case where even from the perusal of the FIR it would be clear that as per the allegations, the petitioner was carrying some tablets in the pocket of his pant and after seeing the police party, he tried to throw it away but he was apprehended. He also submitted that even as per the prosecution story, the tablets were in the pocket of the petitioner which he did not throw away and it was ultimately recovered from his pocket. In such circumstances, the provisions of Section 50 of the NDPS Act were required to be complied with but the same were not complied with in the present case at all and therefore, the recovery got vitiated for non-compliance of Section 50 of the NDPS Act. He also submitted that in fact it is a case where the petitioner has been falsely implicated and he was rather picked up from his house because earlier he was involved in five more cases under the NDPS Act and that is the reason as to why he has been falsely implicated in the present case. He submitted that the petitioner was on interim bail for long period of time and he has not violated any condition of the bail and never jumped the bail. He submitted that considering the aforesaid facts and circumstances and particularly violation of Section 50 of the NDPS Act, the petitioner may be considered for the grant of

regular bail.

3. On the other hand, Mr. A.S. Pannu, learned AAG, Punjab, submitted on instructions from ASI Gurjeet Singh that it is correct that the petitioner is in custody from 6 months and while he was on interim bail he has not violated any condition and after his anticipatory bail was dismissed, he surrendered before the police. He has opposed the grant of regular bail to the petitioner on the ground that the petitioner is involved in 5 more cases under the NDPS Act and also on the ground that the recovered quantity from the petitioner is 900 tablets of *Tramadol* having weight of 336.8 grams which is marginally higher than the commercial quantity under the NDPS Act, therefore, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

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

5. It is a case where although the custody of the petitioner comes out to be 6 months, but he was earlier on interim bail which was granted to him by the learned Special Judge, Gurdaspur and as per the learned counsels for the parties, he did not violate any condition of the interim bail. A perusal of the FIR especially the vernacular version of the FIR would show that as per the allegation, the petitioner when he saw the police party, tried to throw away some packets which was in his pocket and therefore, it appears that the recovery has been effected from his pocket as per the prosecution itself. However, admittedly, the provisions of Section 50 of the NDPS Act were not complied with since no option was given to the petitioner at all. The argument which has been raised by the learned counsel for the petitioner that in the absence of any notice or in case of violation of the provisions of Section 50 of

the NDPS Act, the recovery itself gets vitiated carries weight. Therefore, although this Court does not wish to go into the merits of the aforesaid averments made by both the parties, but only for the purpose of considering the prayer for grant of regular bail to the petitioner, the aforesaid violation of Section 50 of the NDPS Act, if any, would certainly be of great significance.

6. In view of the aforesaid facts and circumstances of the present case, the present petition is allowed and the petitioner is ordered to be released on regular bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

7. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant only for the purpose of decision of present petition.

16.04.2024
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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