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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-18740-2024
Date of decision: 24.04.2024

RULDU SINGH

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Abhinav Prashar, Advocate and
Mr. Jashandeep Singh Sandhu, 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.81 dated 23.06.2022, under Section 22 of the NDPS Act (Section 29 of the NDPS Act added later on), registered at Police Station Sadar Ahmedgarh, District Malerkotla, Sangrur, Punjab.
2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is in custody for about 1 year and 10 months and charges in the present case were framed by the learned trial Court on 21.09.2022 and till date only two prosecution witnesses have been examined by the prosecution despite the fact that charges were framed about 1 year and 7 months ago. He further submitted that the allegation against the petitioner was with regard to recovery of 44.4 grams of *Buprenorphine*, which is about double the prescribed

limit of commercial quantity under the NDPS Act i.e. 20 grams of *Buprenorphine*. He further submitted that although the earlier bail petition filed by the petitioner was dismissed by this Court on 22.11.2023, which is almost five months ago but the trial is not progressing and he has to face further incarceration for no fault of his. He also submitted that although the petitioner is involved in two more cases under the NDPS Act but in one case he has already undergone and considering the facts and circumstances, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner in view 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*.

3. On the other hand, Mr. Adeshwar Singh Pannu, AAG, Punjab submitted on instructions from ASI Narinder Kumar that it is correct that the petitioner is in custody for about 1 year and 10 months and after the framing of the charges by the learned trial Court on 21.09.2022, only two prosecution witnesses have been examined, out of which one was the person who had deposited the sample and another was the Investigating Officer. He further submitted that as of today, the petitioner is involved in one more case under the NDPS Act and two cases under the Excise Act.

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

5. It is a case where the custody of the petitioner comes out to be about 1 year and 10 months and charges were framed by the learned trial Court

on 21.09.2022, which is almost 1 year and 7 months ago but as per the learned counsel for the parties, only two prosecution witnesses have been examined till date. The commercial quantity prescribed under the NDPS Act is 20 grams of *Buprenorphine* and in the present case, the recovery was 44.4 grams of *Buprenorphine*, which falls in the category of commercial quantity. However, the bar contained under Section 37 of the NDPS Act has to be considered in the light of the facts and circumstances of each and every case. 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 21.09.2022, which is about 1 year and 7 months ago, only two prosecution witnesses have been examined, to which he could not offer any explanation. Apart from the above, although the earlier bail petition filed by the petitioner was dismissed by this Court on 22.11.2023 but now the custody of the petitioner has increased and therefore, the second successive bail petition would be maintainable.

6. 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 aforesaid judgments of Hon'ble Supreme Court. Furthermore, it is not the case of the learned State counsel that in case the petitioner is released on bail, then he may influence any witness or may tamper with evidence or may flee from justice.

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.

24.04.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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