

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARHCRM-M-20420-2024(O&M)
Date of Decision: 09.05.2024

Pawan Kumar @ Sahota

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Ayna Vasudeva, Advocate, for the petitioner.

Mr. Adeshwar Singh Pannu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a third petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No.103 dated 17.07.2021, under Sections 21, 25, 27A, 29 of NDPS Act, registered at Police Station STF, Phase-4, Mohali, District SAS Nagar.
2. Learned counsel for the petitioner has submitted that the petitioner is in custody for 2 ½ years i.e. from 05.11.2021. She submitted that it is a case where no recovery has been effected from the petitioner and as per the allegations, the petitioner had supplied heroin to the co-accused but recovery was effected from one Sarabjit Singh @ Sabi who has already been extended the benefit of regular bail by this Court in CRM-M-20085-2024 on 30.04.2024. She submitted that from the co-accused there was recovery of 417 grams of heroin but there was no connection of the petitioner with the aforesaid co-accused and he has been falsely implicated by the police only because of the fact that he was earlier involved in one

another case under the NDPS Act. She further submitted that the aforesaid co-accused has been granted bail by this Court primarily on the ground of unnecessary delay of trial at the hands of the prosecution. She submitted that it is a case where the learned trial Court framed charges on 22.03.2022 which is more than 2 years and 1 month ago but till date only two prosecution witnesses have been examined and that too only formal witnesses and no material witness has been examined in the present case. She submitted that the police party had apprehended the other co-accused which consisted of number of police officials including one ASI Mohammad Sadiq and the aforesaid ASI Mohammad Sadiq has rather been given up by the prosecution and those two witnesses who have been examined were only formal witnesses and there is no justification as to why for more than two years after the framing of charges, the prosecution witnesses who are none other but the police officials did not care to depose before the trial Court. She submitted that this Court while referring to 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 v. The State of Uttar Pradesh*, 2023 SCC Online SC 918 and *Rabi Prakash Versus State of Odisha, Special Leave to Appeal (Crl.) No.4169 of 2023* had granted bail to the other co-accused and the petitioner is not only at parity with the aforesaid co-accused but he is rather at a better footing because there was no recovery effected from the petitioner and therefore, on parity as well, the petitioner may be considered for the grant of regular bail.

3. On the other hand, Mr. Adeshwar Singh Pannu, learned AAG,

Punjab has submitted that so far as the custody of the petitioner is concerned, the same is correct and so far as the parity of the petitioner with the other co-accused is concerned, the same also cannot be disputed. He has however submitted that the petitioner is involved in other cases and he has already been convicted in one case under the NDPS Act and therefore, the petitioner to that extent will not be entitled for the grant of regular bail.

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

5. It is a case where the petitioner has already faced incarceration for 2½ years and the charges in the present case were framed on 22.03.2022 which is almost 2 years and 1 month ago but till date the material witnesses have not been examined, as per learned counsel for the parties. The other co-accused namely, Sarabjit Singh @ Sabi has already been extended the benefit of regular bail by this Court in CRM-M-20085-2024 on 30.04.2024 and it appears that the petitioner is not only at parity with the other co-accused but he is at a better footing. The mere fact that the petitioner was convicted in earlier case cannot become a ground for denial of bail to the petitioner considering the totality and circumstances of the present case.

6. There had been no recovery from the petitioner in the present case and therefore, the bar contained under Section 37 of the NDPS Act will not apply in the present case.

7. Therefore, considering the totality of facts and circumstances of the present case, this Court deems it fit and proper to grant regular bail to the petitioner.

8. 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.

9. 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.

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09.05.2024

rakesh

(JASGURPREET SINGH PURI)

JUDGE

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