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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-19680-2024 (O&M)

Date of Decision: 29.04.2024

Gabbar Singh @ Gabbar

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. R.K. Kachura, 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. 48 dated 17.03.2022, under Section 15 of NDPS Act (Section 25 of NDPS Act added later on), registered at Police Station Guruharsahai, District Ferozepur.
2. Learned counsel for the petitioner submitted that the petitioner is in custody for 2 years and 1 month and as per the allegations, there was a recovery of 70 kgs. of *poppy husk* from the truck wherein the petitioner and the other co-accused were also travelling and as per the allegations, the petitioner was the driver of the truck. He further submitted that the petitioner is not involved in any other case and has got clean antecedents and the

aforesaid alleged recovery was marginally higher than the commercial quantity as defined under the NDPS Act. He submitted that he has already faced incarceration for 2 years and 1 month and charges in the present case were framed by the learned trial Court on 01.10.2022 which is more than 1 year and 6 months ago and till date only three prosecution witnesses have been examined. He submitted that considering his total custody of 2 years and 1 month, he may be considered for grant of regular bail. He also referred 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* in this regard.

3. On the other hand, Mr. Adeshwar Singh Pannu, AAG, Punjab has submitted that so far as the custody of the petitioner is concerned, the same is correct and it is also correct that the petitioner is having clean antecedents and he is not involved in any other case. 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 counsels for the parties.

5. It is a case where the petitioner has already faced incarceration for 2 years and 1 month. The alleged recovery in the present case is stated to be 70 kgs. of *poppy husk* which is marginally higher than the commercial quantity as defined under the NDPS Act and the recovery is stated to be from the truck of which the petitioner is stated to be the driver. The

petitioner is stated to be having clean antecedents and is not involved in any other case. As per learned counsel for the parties, three prosecution witnesses have already been examined. This Court is of the view that considering the judgments of the Hon'ble Supreme Court as aforesaid and considering the custody of the petitioner, clean antecedents of the petitioner and the stage of the trial, the bar contained under Section 37 of the NDPS Act will not apply to the petitioners in the light of Article 21 of the Constitution of India.

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. In view of the above, 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.

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.

29.04.2024

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No
: Yes/No