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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-55255-2023
Date of Decision: 11.01.2024

Lokesh Kumar

..... Petitioner

Versus

Union of India through NCB, Chandigarh

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Diwan S. Adlakha, Advocate,
for the petitioner.

Ms. Gurmeet Kaur Gill, Sr. Panel Counsel,
for the respondent-UI.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present is a second petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing NCB Crime No.04/2022 dated 11.01.2022, under Sections 8, 20, 29 and 60 of the NDPS Act, 1985, registered at Police Station NCB, Chandigarh.
2. Reply by way of an affidavit of Inspector, NCB, Chandigarh has been filed in Court today and the same is taken on record.
3. It has been submitted by learned counsel for the petitioner that the petitioner is in custody for 1 year 11 months and 26 days which is almost 2 years. He further submitted that the allegations in the present case are that the police had apprehended the petitioner and his mother on the basis of the secret information while they were coming in a car and there was an alleged

recovery of 1.870 kgs. of *Charas* from the panels of the doors of the car in a concealed position. He also submitted that the petitioner has clean antecedents and is not involved in any other case and the present case was planted upon the petitioner by the NCB. He further submitted that although the aforesaid quantity is marginally higher than the commercial quantity but the trial of the case has not progressed in a proper manner because the charges in the present case were framed on 17.10.2022 which is almost 1 year and 3 months ago and till date only two prosecution witnesses have been examined. He also submitted that the mother of the petitioner was granted regular bail by this Court on medical ground as she is not keeping good health and the petitioner is also required for taking care of his mother. He submitted that considering the custody of the petitioner which is about 2 years and the fact that the petitioner is having clean antecedents and also the fact that the recovery was only 1.870 kgs. of *Charas*, he may be considered for the grant of regular bail.

4. On the other hand, Ms. Gurmeet Kaur Gill, learned Senior Panel Counsel for respondent-NCB 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 not involved in any other case and has clean antecedents. She has however opposed the grant of bail to the petitioner on the ground that the confiscated quantity from the panels of the door of the car which was driven by the petitioner falls in the category of commercial quantity, and therefore, the bar of Section 37 of the NDPS Act will be attracted in the present case.

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

6. As per the learned counsels for the parties, the total custody of

the petitioner has come out to be 1 year 11 months and 26 days which is almost 2 years and the petitioner is having clean antecedents and is not involved in any other case. The charges in the present case were framed on 17.10.2022 which is almost 1 year and 3 months ago and till date only two prosecution witnesses have been examined. Furthermore, it is neither the case of the State nor it has been so argued by the learned State counsel that in case the petitioner is released on bail then he may abscond or flee from justice or may repeat the offence. This Court is of the view that the petitioner has already faced incarceration for almost 2 years and the judgments of the Hon'ble Supreme Court passed in "Satender Kumar Antil Vs. Central Bureau of Investigation and another", 2022(10) SCC 51, "Dheeraj Kumar Shukla Vs. The State of Uttar Pradesh" 2023 SCC Online SC 918 and "Rabi Prakash Vs. The State of Odisha" in *Special Leave to Appeal (Criminal) No.4169 of 2023* will be applicable to the petitioner especially in view of the fact that he is having clean antecedents and his custody is almost 2 years and also in view of the stage of the trial.

7. Considering the aforesaid peculiar facts and circumstances, this Court is of the view that the bar contained under Section 37 of the NDPS Act will not be applicable to the present petitioner in the light of Article 21 of the Constitution of India and also in the light of the aforesaid judgments of the Hon'ble Supreme Court of India, the petitioner deserves the concession of regular bail. Consequently, 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.

(JASGURPREET SINGH PURI)
JUDGE

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