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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-56688-2023(O&M)

Date of Decision: 07.03.2024

Vijay Kumar @ Vijay Sayal

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sahil Puri, 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.128 dated 03.05.2022, under Sections 22, 29, 61, 85 of NDPS Act, registered at Police Station Division 8, District Police Commissionerate Jalandhar.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody for 1 year and 10 months and as per allegations, there was recovery of 757.6 grams of Tramadol and 178.94 grams of Alprazolam which although falls in the commercial quantity but in the facts and circumstances of the present case the bar of Section 37 of the NDPS Act will not apply to the present petitioner. He submitted that the petitioner is not involved in any other case and has got clean antecedents and even otherwise as per the allegations the story which has been propounded by the

police in the FIR is on the face of it a stereotype kind of story which is normally used in majority of the FIRs. He submitted that as per FIR the petitioner was intercepted and he was asked that as to what was in the bag which he was carrying and thereafter he was offered to get himself searched before a Magistrate or a Gazetted Officer but he declined to do so and in this way, the petitioner was arrested and the recovery was shown to be effected from the petitioner. He submitted that it was a case of false implication and considering the custody of the petitioner and also considering the fact that the petitioner is having clean antecedents, he may be considered for the grant of regular bail.

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 after the framing of the charges on 23.11.2022 two witnesses have already been examined including the Investigating Officer. He submitted that the trial of the case is going on properly and since the recovery from the petitioner 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. He also filed the custody certificate which is taken on record and while referring to the custody certificate, he submitted that so far as the antecedents of the petitioner is concerned, he is not involved in any other case.

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

5. It is a case where the petitioner has already faced incarceration for 1 year and 10 months. The argument which has been raised by the learned counsel for the petitioner that a stereotype FIR has been lodged cannot be ignored at this stage only for the purpose of considering the prayer of the petitioner for grant of bail but without expressing anything on the

merits of the case. The petitioner is stated to be not involved in any other case and has got clean antecedents and he has already faced incarceration for 1 year and 10 months and only two witnesses have been examined till date despite the fact that about 1 year and 3 months have elapsed after the framing of the charges. After considering the aforesaid facts and circumstances and especially the arguments raised by the learned counsel for the petitioner pertaining to his false implication, this Court is of the view that considering the custody of the petitioner coupled with his background that he is not involved in any other case, the bar of Section 37 of the NDPS Act will not apply to the petitioner 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. 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.

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.

07.03.2024

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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