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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-62807-2023 (O&M)

Date of Decision: 04.01.2024

Sanjay

....Petitioner(s)

Versus

State of U.T. Chandigarh

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Srishtti S. Sharma, Advocate and
Mr. Gaurav Datta, Advocate, for the petitioner.

Mr. Manish Bansal, Public Prosecutor for
Union Territory, Chandigarh.

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. 23 dated 12.03.2022, under Section 21 of NDPS Act, registered at Police Station Sector 19, Chandigarh.
2. It has been submitted by the learned counsel for the petitioner that the petitioner is in custody for about 1 year and 8 months. She submitted that the petitioner is not involved in any other case and has got clean antecedents and the present case was planted upon the petitioner at night time. She further submitted that as per the allegations there was a recovery of 263.4 grams of heroin from the petitioner which was in a polythene bag and even as per the prosecution the said quantity was weighed alongwith the

polythene bag and since the aforesaid quantity of 263.4 grams is marginally higher than the commercial quantity which has been weighed alongwith polythene bag, it is yet to be seen at the time of trial as to whether the aforesaid quantity would fall within the category of commercial quantity or not after subtracting the weight of the polythene bag. She submitted that be that as it may even otherwise the petitioner who is having clean antecedents has already faced incarceration for about 1 year and 8 months and the charges in the present case were framed on 06.08.2022 and thereafter five witnesses have already been examined. She submitted that considering the clean antecedents of the petitioner and the custody period, he may be considered for the grant of regular bail. She also submitted that earlier the petitioner was granted interim bail for a period of two months on the ground of the pregnancy of the wife of the petitioner and after availing the benefit of interim bail, the petitioner has surrendered well in time and therefore there is no chance that the petitioner will flee from justice in case the regular bail is granted to him.

3. On the other hand, Mr. Manish Bansal, learned Public Prosecutor appearing on behalf of Union Territory, Chandigarh submitted that the petitioner is in custody for about 1 year and 8 months and after the petitioner was granted interim bail for two months, he surrendered well in time. He submitted that the petitioner is not involved in any other case and has got clean antecedents. He has however submitted that since the recovered quantity of heroin although marginally higher than the commercial quantity but still falls in the category of commercial quantity and therefore, the petitioner is not entitled for the grant of regular bail.

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

5. The petitioner has already faced incarceration for about 1 year and 8 months and the charges were framed on 06.08.2022 and only five prosecution witnesses have been examined till date. The petitioner is stated to be not involved in any other case and has clean antecedents and when he was earlier granted interim bail by this Court for a period two months as per learned counsel for the parties, he surrendered well in time. So far as the weight of the confiscated quantity of heroin is concerned, the same is stated to be 263.4 grams of heroin alongwith the polythene bag and it is yet to be seen at the time of trial as to whether the aforesaid quantity would fall within the category of commercial quantity or not after subtracting the weight of the polythene bag. However, this Court would consider the bail petition of the petitioner on the basis of long custody of the petitioner in the light of Section 37 of the NDPS Act. It is not in dispute that the petitioner is in custody for about 1 year and 8 months and he is having clean antecedents.

6. Therefore, considering the aforesaid facts and circumstance, this Court is of the view that applying the ratio of the judgments of the 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], the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner in the light of Article 21 of the Constitution of India.

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 petitions only.

04.01.2024

rakesh

Whether speaking : Yes/No

Whether reportable : Yes/No

(JASGURPREET SINGH PURI)

JUDGE