

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-39650-2020
Date of Decision: 10.12.2020

Pankaj Kumar @ PankuPetitioner

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Divjyot Singh Sandhu, Advocate,
for the petitioner.

Mr. Luvinder Sofat, A.A.G, Punjab.

Through Video Conferencing

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail pending trial in case FIR No.86 dated 18.04.2015, under Sections 22 and 29 of the NDPS Act, registered at Police Station City Kapurthala, District Kapurthala.

The learned counsel for the petitioner has submitted that the petitioner was falsely implicated in this case. He has submitted that in the present case, one Gurjit Singh @ Sonu son of Jarnail Singh was apprehended by the police and there was an alleged recovery of 50 grams of Alprazolam from him. Thereafter, during the investigation, on the disclosure statement of the aforesaid accused, another accused was nominated, namely, Sarabjit Singh @ Luga. Thereafter, on the further disclosure statement of Sarabjit Singh @ Luga, the petitioner was nominated in the present case. He has further submitted that as per the settled law, the

disclosure statement itself has no legal credence in view of the law laid down by the Hon'ble Supreme Court in **Tofan Singh Vs. State of Tamil Nadu (2013) 17 SCC 31** and that it cannot be read into evidence. The learned counsel further submitted that the petitioner was involved in another case under Section 302 IPC, which was registered against him, vide FIR No.167 dated 28.07.2013 and that he is in custody since that time. He has further submitted that the present FIR is of the year 2015 and while he was in custody in another case for about 02 years and there was no occasion for him to have been connected with the present FIR and that is why he has been roped in purely on the basis of disclosure statement of the accused Sarabjit Singh @ Luga. He has further referred to the other matters, which are pending against him under the NDPS Act and has submitted that all the other cases, which have been mentioned in the custody certificate were after the year 2015 while he was in custody in the aforesaid FIR under Section 302 IPC from the year 2013 and all the FIRs pertaining to NDPS Act were on the basis of disclosure statement. The learned counsel further submitted that once the petitioner was in custody from the year 2013 and in all the subsequent FIRs pertaining to NDPS Act, he has been falsely implicated and his name has been nominated without any basis.

The learned counsel for the petitioner further submitted that so far as the present FIR is concerned, the total custody of the petitioner comes out to be 05 years and 12 days and even otherwise also, the alleged recovery is of 50 grams of Alprazolam, which is of a non-commercial quantity. The learned counsel has, therefore, submitted that the petitioner may be considered for grant of regular bail in the present case.

On the other hand, the learned State counsel has submitted that although, the name of the petitioner was nominated on the basis of disclosure statement of one Sarabjit Singh @ Luga, whose name was also nominated on the basis of the disclosure statement of one Gurjit Singh @ Sonu but that itself cannot become a ground for grant of bail to the petitioner.

However, the learned counsel for the State has not disputed the custody of the petitioner and has rather filed the custody certificate in this Court by way of e-mail. He further submitted that since the petitioner is involved in many other cases under the NDPS Act, he may not be granted concession of bail.

I have heard learned counsel for the parties.

The factual position regarding custody in the present case is not disputed as the State itself has filed a custody certificate in this Court. So far as the fact that the name of the petitioner was nominated on the basis of the disclosure statement made by one Sarabjit Singh @ Luga, who was also nominated on the basis of the disclosure statement made by one Gurjit Singh @ Sonu, the fact remains that the petitioner was already in custody about 02 years back when he was involved in another case under Section 302 IPC. So far as the other cases mentioned in the custody certificate are concerned, all of them were after the registration of the aforesaid FIR under Section 302 IPC and it is undisputed that the petitioner is in custody since 2013 in the aforesaid FIR under Section 302 IPC.

Therefore, considering the totality of circumstances of the present case and considering the long custody of the petitioner, the present

petition is allowed. The petitioner shall be admitted to regular bail unless he is not required in any other case and on his furnishing bail/surety bonds subject to the satisfaction of the learned trial Court/Duty Magistrate.

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.

10.12.2020
adhikari

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No