

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

204

CRM-M-5408-2020

Date of Decision : September 15, 2021

SULINDER SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. R.S. Sidhu, Advocate
for the petitioner.

Mr. Randhir Singh Thind, DAG, Punjab.

Through Video Conferencing

JASGURPREET SINGH PURI. J. (Oral)

The present petition has been filed under Section 438 of Code of Criminal Procedure for grant of anticipatory bail to the petitioner in FIR No.28 dated 25.03.2019 under Sections 18/25 of NDPS Act, 1985 registered at Police Station Phase-8, District SAS Nagar, Mohali.

Learned counsel for the petitioner has submitted that in pursuance of order passed by this Court on 07.02.2020, the petitioner has joined the investigation and he is cooperating with the investigation process. He has further submitted that it is a case where a false case has been planted upon the petitioner and he was not named in the FIR and there was recovery of 10 Kgs. of opium from four persons which did not include the petitioner and his name was nominated later on only in view of the fact that he was the owner of the car, from which the aforesaid four accused were apprehended. He submitted that one of the co-accused is a relative of the petitioner but that itself would not mean that the petitioner is also involved in the present case unless there is any other link between the petitioner and the offence. He submitted that the investigation of the case has already been completed and although the recovery was of commercial quantity but the provisions of Section 37 of the NDPS Act

will not be attracted in the present case in the absence of any other supportive or link evidence, by which it can be said that the petitioner is involved in the present case. He submitted that there are sufficient reasons to believe that the petitioner is not guilty in the present offence. He further submitted that the petitioner is not involved in any other case.

Mr. Thind, learned DAG, Punjab has submitted on instructions from ASI Amar Nath that in pursuance to the order passed by this Court on 07.02.2020, the petitioner has joined the investigation and he is co-operating with the investigation process. He has, however, submitted that since the alleged recovery was of commercial quantity the provisions of Section 37 of the NDPS Act will apply in the present case. So far as the investigation is concerned, the same has already been completed. He has also not disputed that the petitioner is not involved in any other case.

I have heard learned counsels for the parties.

As per the learned State counsel the petitioner has already joined the investigation and he is cooperating with the investigating process. One of the issues which needs to be considered in the present case would be as to whether the bar contained under Section 37 of the NDPS Act would be attracted in the present case at this stage or not. The petitioner was not named in the FIR and he is not involved in any other case. His name was nominated only on the basis of the fact that one of his relative is co-accused and the car belongs to the petitioner. On specific query being asked from the learned State Counsel that as to how the petitioner was involved in the present case apart from the fact that he is owner of the car, the learned State Counsel has not been able to satisfy the Court with regard to the same. At this stage, there does not seem to be any supportive/corroborative evidence to link the petitioner with the present offence.

Therefore, this Court is satisfied at this stage that prima facie there are sufficient reasons to believe that the petitioner is not guilty in

the present offence. So far as the other condition of the Section 37 of the NDPS Act with regard to likelihood of committing of another offence is concerned, since the petitioner is not involved in any other case and no apprehension has been expressed by the learned State counsel that there is any likelihood that he may commit another offence, the second ingredient for making departure from the bar contained under Section 37 of NDPS Act would also remain satisfied. Therefore, this Court is of the opinion at this stage that departure can be made from the bar contained under Section 37 of the NDPS Act qua the petitioner.

Therefore, considering the totality of the facts and circumstances of the present case, the present petition is allowed and order dated 07.02.2020 is, hereby, made absolute.

However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

September 15, 2021
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(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No