

CRM-M- No.13149 of 2021

Date of Decision : 02.09.2021

Vijay Pal Singh

...Petitioner

Versus

State of Haryana

....Respondent

Coram : Hon'ble Mr. Justice B.S. WaliaPresent : Mr. S.S Sahu, Advocate for the petitioner.
Mr. Naveen Kumar Sheoran, DAG, Haryana.
*****B.S. Walia, J. (VC)**

1. Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.

2. Prayer in the petition under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.178, dated 24.09.2020 registered under Sections 22-C/27-A/61/85 NDPS Act at Police Station Bhattu Kalan, Tehsil and District Fatehabad.

3. Learned counsel contends that the petitioner was implicated in the instant case on the arrest of co-accused Sita Ram, from whom on his arrest on 24.09.2020, 263 strips (containing 10 tablets each) of Tramadol Hydrochloride 100 mg. (Total 2630 tablets) of different batches having total weight 01 kg. 510 grms. and 328 strips (containing 10 tablets each) of Peezolam 0.5-Alprazolam tablets I.P. 0.5 mg. bearing batch No.1902 MFG-February/2020, EXP-Jan/2023 (Total 3280 tablets) having total weight 600 grms. were recovered and who made a disclosure statement of having purchased the aforementioned contraband from the petitioner, whereupon Section 27-A of the NDPS Act was added and the

statement of his involvement in the present case.

4. Learned counsel contends that apart from the aforementioned disclosure statements, there is no other material to connect the petitioner with the commission of the offence. Challan has been presented, charges have been framed, there are 13 prosecution witnesses, none of them have been examined and in the prevailing pandemic conditions, trial would take considerable time to conclude, therefore, no useful purpose would be served by keeping the petitioner behind bars.

5. On the other hand, learned State Counsel contends that no doubt the petitioner has been implicated in the instant case, solely on the basis of disclosure statement, yet in view of the commercial quantity of contraband recovered from co-accused Sita Ram, bar under Section 37 NDPS Act would be attracted, therefore, the petitioner is not entitled to be released on regular bail.

6. I have considered the submissions of learned counsel for the parties.

7. Admittedly, the involvement of the petitioner in the instant case is solely on the basis of disclosure statement of co-accused Sita Ram from whom on his arrest on 24.09.2020, commercial quantity of contraband was recovered and who made a statement that he had purchased the said contraband from the petitioner, besides disclosure statement by the petitioner pursuant to his arrest. However, apart from the disclosure statements, there is no other material to connect the petitioner with the commission of the offence.

8. Hon'ble the Supreme Court in '*Tofan Singh versus State of Tamil Nadu*', 2021(1) RCR (Crl) 1, has held that a confessional statement made to a police officer cannot be taken into account to convict an accused under the NDPS Act in view of Section 25, Evidence Act whereas in *Hari Charan Kurmi Vs. State of Bihar*, 1964 AIR (SC) 1184 it was held that mere confession of co accused is not enough to implicate an accused except where there is other satisfactory evidence to sustain the charge against said accused person, in which eventuality, the confession can be used by the court to assure itself that the conclusion which it is inclined to draw from the other evidence is right.

Relevant extract of the aforementioned decision's reproduced as under:-

Tofan Singh's case (Supra) :-

"155. We answer the reference by stating : (i) That the officers who are invested with powers under Section 53 of the NDPS Act are "Police officers" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act."

Hari Charan Kurmi's case (Supra) :-

".....Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has

formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in Section 30.....”

Tofan Singh's decision was followed by a Co-ordinate Bench of this Court in 'Rakesh Kumar Singla versus Union of India' in CRM-M No.23220 of 2020, decided on 14.01.2021. Apart from the disclosure statement of co accused as well as disclosure statement / confession by petitioner there is no material to connect the petitioner with the commission of the offence. Although, recovery in the case is of commercial quantity, yet the bar under Section 37 would not be attracted in view of the petitioner not having been arrested from the site, there being no recovery from him, besides in view of the only material relied upon by the State being disclosure statement of co accused and confession / disclosure by petitioner while in police custody. In the circumstances, it can reasonably be assumed that the petitioner is not involved in the commission of the offence besides on account of his not being involved in any other case under the NDPS Act, 1985 (having been discharged in a case), it can be reasonably assumed that he is not likely to commit any offence under the NDPS Act, 1985 while on bail. Moreover, investigation is complete, challan has been presented and charges have been framed and the petitioner is behind bars since 04.01.2021, and trial of the case is likely to take time.

9. Without commenting on the merits of the case, I am of the

view that no useful purpose would be served by keeping the petitioner behind bars. Accordingly, the petition for regular bail is ***allowed*** and the petitioner is ordered to be released on regular bail during the pendency of the trial, subject to his furnishing bail / surety bonds to the satisfaction of the learned CJM / Trial Court / Duty Magistrate, concerned, provided he is not required in any other case. The petitioner shall also abide by the conditions contained in Section 437(3) Cr.P.C. However, nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case.

10. Needless to mention, in case the petitioner is involved in any other case under the NDPS, Act, 1985 while on regular bail in the instant case, the prosecution would be at liberty to move an application for cancellation of bail granted to the petitioner in the instant case.

11. Petition allowed in the aforementioned terms.

(B.S. Walia)
Judge

02.09.2021
'Rajneesh/Amit'

<i>Whether speaking/ reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>