

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

213

CRM-M-17166-2021(O&M)
Date of Decision : July 16, 2021

SURESH

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Sanchit Punia, Advocate
for the petitioner.

Mr. Deepak Manchanda, Addl. A.G., Haryana.

Through Video Conferencing

JASGURPREET SINGH PURI. J. (Oral)

CRM-17414-2021

The present application has been filed seeking permission of this Court for amendment of the petition in view of the fact that Section 29 the Narcotic Drugs and Psychotropic Substances Act has been added lateron and, therefore, the prayer is made for allowing the amendment of the petition and to place on record the amended memo of parties.

Notice in the application.

Mr. Deepak Manchanda, learned DAG, Haryana accepts notice on behalf of State of Haryana. He has submitted that he has no objection in case the amended memo of parties is placed on record only for the purpose of correction of the headnote and other places where Section 29 of the Act is to be added only.

In view of the above, the present application is allowed. The

amended headnote alongwith the amended memo of parties are taken on record.

Main case

The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.88 dated 20.2.2021, under Sections 20/29-61-85 of the Narcotic Drugs and Psychotropic Substances Act, Police Station Narnaud, District Hansi.

Learned counsel for the petitioner has submitted that it is a case where the petitioner has been falsely implicated. He has further submitted that the petitioner is not involved in any other case whatsoever. He has submitted that he is in custody since 25.2.2021 and in the present case the investigation is already complete and the challan has already been presented on 21.5.2021. He has submitted that it is a case where there was alleged recovery of 325 kg of ganja which is although commercial quantity and apart from the same 393 kg of ganja was recovered from agricultural fields. He has submitted that the name of the petitioner has been nominated on the basis of a second disclosure statement made by one Ramesh, on the basis of which ganja patti was recovered from the fields of one Inder Singh and according to the said Ramesh the land was being taken on sharing basis by the petitioner and therefore, the petitioner has been implicated only on the basis of disclosure statement of the aforesaid Ramesh. Learned counsel for the petitioner has submitted that there is no evidence available on the record to show that apart from the disclosure statement the petitioner was

in any way connected with the alleged recovery. He has submitted that as per the law laid down by Hon'ble Supreme Court in **Tofan Singh Vs. State of Tamil Nadu, 2021 (1) RCR (Crl.) 1** such disclosure statements are not admissible in evidence.

On the other hand, Mr. Deepak Manchanda, learned DAG, Haryana has submitted that since the petitioner was co-cultivator of the land from which the recovery was effected, the petitioner does not deserve the concession of bail. He has submitted that it is correct that the petitioner is in custody since 25.02.2021 and his name has been nominated on the basis of disclosure statement made by the aforesaid Ramesh.

Replying to the contention raised by the learned State counsel, it has been submitted by the learned counsel for the petitioner that the mere fact that the petitioner was a co-cultivator in the fields from where the alleged recovery was effected cannot raise any presumption that the petitioner was involved in the case unless there is any sufficient material available on record. He has submitted that his name has been nominated only on the basis of disclosure statement and that also in the second disclosure statement of Ramesh and since the investigation is already complete and no recovery is to be made, he may be considered for grant of regular bail. He has further submitted that the bar contained under Section 37 of the NDPS Act would not apply to the petitioner because as of now there is nothing on record to connect the petitioner apart from the disclosure statement which is not admissible in evidence and therefore, more than prima facie case is made out in favour

of the petitioner to presume at this stage that he was not at guilty. He has also stated that a similarly situated co-accused namely Sanjay alias Bablu has also been granted bail by this Court vide order passed on 30.6.2021 in CRM-M-23130-2021.

I have heard the learned counsel for the parties.

The custody period of the petitioner is not in dispute and it is also not in dispute that the challan of the case has already been presented by the police. So far as the plea raised by the learned counsel for the petitioner that his name has been nominated on the basis of a second disclosure statement of Ramesh is concerned, the same needs to be considered especially for the purpose of application of Section 37 of the NDPS Act wherein bar has been contained for the grant of bail. As per learned counsel for the petitioner there is no sufficient material available with the prosecution to connect the petitioner apart from the disclosure statement of Ramesh. The fact that the petitioner was a co-cultivator of the land from where the alleged recovery was made would not be sufficient at this stage for presuming that the petitioner was connected with the case. The admissibility of disclosure statement of co-accused is certainly not admissible in evidence per-se in view of the law laid down by the Hon'ble Supreme Court in Tofan Singh's case (Supra). Therefore, it is a fit case where departure can be made from the bar contained under Section 37 of the NDPS Act as it appears that there is prima facie case in favour of the petitioner to believe at this stage that the petitioner is not guilty of said offence. So far as the other ingredients of Section 37 of the Act that the petitioner is likely to commit any other offence during

bail is concerned, it is a case where the petitioner is not involved in any other case and therefore, there is nothing to show that there is likelihood that the petitioner would commit an offence again while on bail.

Therefore, without commenting upon the merits and circumstances of the present case, the present petition is allowed. The petitioner is ordered to be released on regular bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/Duty Magistrate.

(JASGURPREET SINGH PURI)
JUDGE

July 16, 2021
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No