

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

211

CRM-M No.19636 of 2021 (O & M)
Date of decision:25.08.2021

Naresh Mittal @ Rinku @ Rakesh Mittal

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Arjun Veer Sharma, Advocate
for the petitioner.

Mr. Sandeep Singh Deol, DAG, Punjab.

SUVIR SEHGAL J. (ORAL)

Heard through video conferencing.

This is the second petition filed by the petitioner under Section 439 of Cr.P.C. for grant of regular bail in case FIR No.120, dated 26.08.2020 registered under Sections 22, 25 and 29 of the NDPS Act, 1985, at Police Station Dhanaula, District Barnala, Annexure P-1.

FIR came to be registered when Abhishek Sharma, who was riding a motorcycle was intercepted and a bag containing 9000 tablets was recovered from him.

Counsel for the petitioner submits that the petitioner is a registered Pharmacist and has been arraigned as an accused on the basis of disclosure statement of accused Abhishek Sharma, who claimed that he had purchased 180 intoxicant capsules from the petitioner. It is his

argument that the statement of the co-accused recorded in police custody, is inadmissible in evidence. He has placed reliance upon the judgment of Hon'ble Supreme Court in Tofan Singh versus State of Tamil Nadu (2021) 1 RCR (Criminal) 1. He submits that the petitioner has been named as an accused in two other cases, both of which have been registered for the offence under the NDPS Act and the petitioner has been granted bail in both the cases by this Court vide orders, Annexures P-4 and P-5. Counsel submits that the first petition (CRM-M-36893-2020) filed by the petitioner was withdrawn after arguments on 22.04.2021 and thereafter the charges have been framed and that despite lapse of a long time after his arrest, prosecution evidence has not started. Therefore, this will amount to change in circumstances to enable him to approach this Court again with a fresh petition. He asserts that the petitioner is no longer required for custodial interrogation as investigation is complete, challan has been presented and charge has been framed and the petitioner, who is in custody since 22.09.2020, deserves to be released on bail.

Opposing the petition, learned State counsel upon instructions from ASI Gurtej Singh, submits that recovery of 9000 tablets of *Alprazolam* was effected on the statement of accused Abhishek Sharma and another recovery of 180 tablets of *Tramadol* was effected from him, which is stated to have been purchased from accused-Naresh Mittal. On the basis of instructions received, State counsel is not in a position to dispute the fact that the petitioner has been nominated on the basis of the disclosure statement of Abhishek Sharma. Upon further instructions,

he submits that charges has been framed on 20.08.2021, though the testimony of the prosecution witnesses is yet to be recorded.

Having examined the facts and circumstances of the case, the Court is of the opinion that the petitioner has been arraigned as an accused on the basis of a disclosure statement, the legality and veracity of which is yet to be tested and no recovery has been effected from him. Considering the period of incarceration of the petitioner and the fact that the trial is likely to take time to conclude, this Court is prima facie of the view that he would be entitled to be released on bail

Without commenting upon the merits or de-merits of the arguments addressed by the counsel for the parties, the petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate.

While being released on bail, the petitioner shall furnish an undertaking to the effect that henceforth, he will not get involved in any criminal activity. In case, the petitioner violates the undertaking, it shall be open to the State to seek cancellation of bail.

It is clarified that any observation made hereinabove shall not be construed as an expression of opinion on the merits of the case.

25.08.2021
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No