

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

214

CRM-M-21034-2021(O&M)
Date of Decision : July 16, 2021

KARAMBIR

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Naveen Siwach, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana.

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 to the petitioner in case FIR No.71 dated 5.2.2021 under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station Azad Nagar, Hisar, District Hisar.

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case as the petitioner was not named in the FIR and the alleged recovery of 27 kg 400 grams of ganja has been allegedly recovered from the co-accused namely Sanjay and it was on the basis of his disclosure statement that the name of the petitioner has been nominated in the FIR. Learned counsel for the petitioner has submitted that the petitioner is not in a habit of doing such kind of activities and he is not involved in any other case and it was only

because of the disclosure statement of the co-accused that his name has been nominated. He has submitted that there is no material available with the prosecution to connect the petitioner with the alleged recovery and, therefore, in view of the law laid down by Hon'ble Supreme Court in *Tofan Singh Vs. State of Tamil Nadu, 2021 (1) RCR (Crl.) 1* the petitioner may be considered for grant of regular bail. He has submitted that he is in custody since 6.2.2021 and the investigation of the case is already complete and challan has been presented on 3.5.2021 and nothing is to be recovered from the petitioner. He has further submitted that although, the recovery from the co-accused was of a commercial quantity the bar contained under Section 37 of the NDPS Act will not be applicable in the present case in view of the fact that it is a case where the name of the petitioner has been nominated purely on the basis of disclosure statement which is not admissible in evidence.

On the other hand, Mr. Naveen Singh Panwar, learned DAG, Haryana has stated that on the basis of disclosure statement of the co-accused the name of the petitioner has come up. So far as the custody period of the petitioner is concerned, the learned State counsel has not disputed the same. It has also not been disputed that the petitioner is not involved in any other case.

I have heard the learned counsel for the parties.

It has not been disputed by the learned State counsel that the petitioner is not involved in any other case and the investigation of the case is already complete and challan has been presented on 3.5.2021.

The case of the petitioner is that he was nominated purely on the basis of one disclosure statement made by co-accused in which he has mentioned the name of the petitioner but there is no material available on record as of now to link the petitioner with the alleged recovery. The submissions made by the learned counsel for the petitioner would be considered in the light of the provisions contained in Section 37 of the NDPS Act where a bar has been created for grant of bail in the case of recovery of commercial quantity of contraband. In the present case the alleged recovery has been effected from the co-accused and on the basis of the disclosure statement of the co-accused the name of the petitioner has been nominated. There is nothing on record to show at this stage that there is any other sufficient material available on record that the petitioner is connected with the alleged recovery apart from the disclosure statement. The disclosure statement of the co-accused is not admissible in evidence in view of the judgment of the Hon'ble Supreme Court in Totan Singh's case (Supra). Admittedly, the petitioner is not involved in any other case, therefore, this Court considers that it is a fit case where a departure can be made from the bar contained under Section 37 of the NDPS Act because at this stage there is a prima facie belief that the petitioner is not guilty of offence. So far as the likelihood of the petitioner for committing another offence is concerned, since the petitioner is not involved in any other case and there is nothing on the record to show that there is any likelihood that the petitioner may commit another offence, this Court deems it fit and

appropriate to make a departure from the bar contained under Section 37 of the NDPS Act.

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 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