

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

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CRM-M-21864-2021

Date of Decision : November 10, 2021

BALAU SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Tarunveer Vashist, Advocate
for the petitioner.

Mr. Karanbir Singh, AAG, Punjab.

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.65 dated 28.04.2021 under Sections 22 and 29 of NDPS Act registered at Police Station City Sangrur.

The learned counsel for the petitioner has submitted that in the present case, the petitioner has been falsely implicated and he is in custody since 29.04.2021 which is more than six months and the investigation of the case is already complete and challan has been presented in the present case and no recovery is to be effected from the petitioner. He further submitted that it is a case where the petitioner is not a habitual offender and he is not involved in any other case and in the present case, he has been nominated on the basis of a second

disclosure statement. He has submitted that as per the prosecution story, one Sandeep Singh was caught in possession of 850 tablets of clovidol and thereafter, on his disclosure statement one Hardeep Singh was nominated on the ground that the supply of tablets was made by aforesaid Hardeep Singh. Thereafter, the aforesaid Hardeep Singh was arrested and it was on his disclosure statement that petitioner's name was nominated in the present case. He has submitted that the petitioner has nothing to do with the present case and it was only because of enmity that the name of the petitioner has been nominated, which infact gets substantiated from the fact that the petitioner is not involved in any other case. He has further submitted that the law with regard to the admissibility of a disclosure statement made by co-accused is well settled by the Hon'ble Supreme Court in **Tofan Singh Vs. State of Tamil Nadu, 2021 (1) RCR (Crl.) 1**. He submitted that apart from the disclosure statement, there is nothing on record or any sufficient material available with the prosecution to connect the petitioner with the present offence and, therefore, prayed that he may be considered for the grant of regular bail.

On the other hand, Mr. Karanbir Singh, learned AAG, Punjab has submitted that so far as the custody of the petitioner is concerned, the same is correct and it is also correct that the petitioner is not involved in any other case. He has submitted that an affidavit has been filed by the Station House Officer, City Sangrur, in which it has been submitted that the petitioner's name was nominated on the basis of the disclosure statement made by one co-accused, namely Hardeep Singh @ Deepa, who was also nominated on the basis of a disclosure statement

made by co-accused, namely, Sandeep who was apprehended at the spot. He submitted that when the petitioner was arrested, he had also made a disclosure statement before the police officer that infact he used to bring intoxicant tablets in his ambulance alongwith one other person, namely, Ranjeet Singh. The learned State counsel, however, referred to para No.10 of the affidavit while stating regarding the antecedents of the petitioner that there is no other FIR against the petitioner. He has, however, opposed the grant of regular bail to the petitioner on the basis of bar contained under Section 37 of the NDPS Act.

I have heard the learned counsels for the parties.

The custody period of the petitioner is not in dispute. It is also not in dispute that the petitioner is not involved in any other case. The investigation of the case is already complete and the challan has been presented before the competent Court. The name of the petitioner has been nominated on the basis of a second disclosure statement. The plea taken by the learned State counsel that when the petitioner was arrested, he had made a disclosure statement before the police officer that he used to bring the intoxicant tablets in his ambulance, would also not be relevant being inadmissible unless there is anything to show that in pursuance of the statement made by the petitioner any contraband etc. has been recovered. The argument raised by the learned State counsel as well as the perusal of the affidavit filed by the State, there is nothing to show as to how the petitioner was connected with the present offence apart from the disclosure statement and, therefore, at this stage, there is nothing on record to show as to whether there is any sufficient material

available in this regard. Disclosure statement *per se* would not be admissible in evidence in view of the law laid down by the Hon'ble Supreme Court in Tofan Singh's case (supra). Furthermore, it is not the case of the State that in case the petitioner is released on bail then he may influence any witness or may tamper evidence or may flee from justice. However, since the confiscated contraband from the co-accused was of commercial quantity, therefore, the plea taken by the learned counsel for the State is to be considered in the light of bar contained under Section 37 of the NDPS Act.

In the facts and circumstances of the present case, there is no sufficient material available either on the basis of submissions of the learned State counsel or the affidavit filed by the State that the petitioner is connected with the present offence apart from the disclosure statement made by the co-accused and that too by an accused who was also nominated on the basis of a disclosure statement. So far as the second ingredient of Section 37 of the NDPS Act for making departure from the bar is concerned, the petitioner as per the affidavit filed by the State is not involved in any other case nor it is the case of the State that in case the petitioner is released on bail then he may repeat the offence or may flee from justice. Therefore, both the ingredients contained in Section 37 of the NDPS Act for making departure from the bar would remain satisfied. Therefore, this Court, at this stage, is of the *prima facie* view that there are reasons to believe that the petitioner is not guilty of the offence and, therefore, considering the totality of the facts and circumstances of the present case, this Court deems it fit and proper to grant regular bail to the

petitioner.

Consequently, 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/trial Court/Duty Magistrate.

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.

November 10, 2021
ajay-l/rajender

(JASGURPREET SINGH PURI)
JUDGE

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