

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

214

CRM-M-22731-2021

Date of Decision : June 29, 2021

SHAHANSHA

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. G.C.Shahpuri, 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.106 dated 16.4.2021 under Sections 22-29-61-85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Bilaspur, District Yamuna Nagar.

As per the FIR when the police party was patrolling then one informer came to the police party and passed a secret information that one Avtar Singh son of Tara Singh, resident of Bastiawala, District Yamuna Nagar was indulged in selling the intoxicating medicine for long time and thereafter when the raid was conducted then the co-accused namely Avtar Singh was apprehended and 1050 capsules were recovered from Avtar Singh. This intoxicant material was of Marka Parvion Spas which contained Parvion Spas.

The learned counsel for the petitioner has submitted that so far as the petitioner is concerned, he has been falsely implicated in the

present case and has submitted that the petitioner is not a habitual offender and he is not involved in any other case. He further submitted that the name of the petitioner has been nominated solely on the ground of disclosure statement of the co-accused namely Avtar Singh and there is no other material available with the police to connect the petitioner. He submitted that the disclosure statement is totally impermissible under the law as has been laid down by the Hon'ble Supreme Court in *Tofan Singh Vs. State of Tamil Nadu, 2021 (1) RCR (Crl.) 1*. He has submitted that the petitioner is facing incarceration since 16.04.2021 and the investigation of the case is already complete and the challan stands presented on 01.06.2021. Since the trial of the case would take a long time, he may be considered for the grant of regular bail.

On the other hand, Mr. Panwar, learned Deputy Advocate General, Haryana has submitted that the amount of alleged contraband was commercial in nature. He further submitted that it is correct that the custody of the petitioner is from 16.04.2021 and the investigation of the case is already complete and the challan has been presented on 01.06.2021. He has further submitted that it is also correct that the petitioner is not involved in any other case. He further submitted that the name of the petitioner has been nominated purely on the basis of the disclosure statement and as of now there is no evidence available on record to show that the petitioner was connected with the alleged offence due to some other material.

I have heard the learned counsels for the parties.

It is not in dispute that the investigation is already complete

and the challan stands presented. It is also not disputed that the petitioner is not involved in any other case. It is also not disputed that the name of the petitioner was nominated on the basis of the disclosure statement of co-accused, namely, Avtar Singh and as of now as per the learned counsels for the petitioner and the State there is no material available on record to show that the petitioner was connected with the alleged offence apart from the disclosure statement. So far as the permissibility of the disclosure statement in NDPS matter is concerned, the same is now settled by the Hon'ble Supreme Court in Tofan Singh's case (supra). So far as the bar contained in Section 37 of the NDPS Act is concerned, since all the facts and circumstances which are available on the record and the arguments addressed by learned counsel for the parties, the petitioner is allegedly associated with the offence only on the basis of the disclosure statement which is not admissible in evidence, therefore, at this stage there is more than a prima facie case in favour of the petitioner so as to make departure from the bar contained under Section 37 of the NDPS Act.

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/Duty Magistrate.

(JASGURPREET SINGH PURI)
JUDGE

June 29, 2021
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No