

Sanjay @ Bablu

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURIPresent: Mr. Pardeep Solath, 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 with a prayer for grant of regular bail pending trial to the petitioner in FIR No.88, dated 20.02.2021, under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Narnaund, District Hansi.

The learned counsel for the petitioner has submitted that the petitioner is in custody since 01.03.2021 and the investigation is complete and challan has been presented. He has submitted that the petitioner has been falsely implicated in the present case by the police. Giving the factual background of the present case against the petitioner, he has submitted that earlier there was an FIR registered against the petitioner at the same police station bearing FIR No.343, dated 03.08.2020, under Section 20 NDPS Act

in which the petitioner was not named as an accused but he was nominated on the basis of second disclosure statement of co-accused. In that case also there was no recovery from the petitioner and it was only on the basis of disclosure statement that he was arrested. He, therefore, filed regular bail application before this Court and a co-ordinate Bench of this Court in CRM-M-13473 of 2021 vide Annexure P-3 dated 26.03.2021 allowed his bail application and he was released on bail primarily on the ground that he was nominated on the basis of second disclosure statement. Learned counsel has submitted that while the petitioner was in custody his name was nominated in the present case again by a disclosure statement and the petitioner has not been named in the present FIR. He has further submitted that in the present case also there was no recovery effected from the petitioner and there was no material available on the record to show that the petitioner is involved in the present case. He has submitted that the police has planted the case upon the petitioner of their own.

Mr. Panwar, learned DAG, Haryana has submitted that it is correct that the petitioner is in custody since 01.03.2021 which approximately comes to 4 months and it is also correct that the name of the petitioner did not figure in the FIR and no recovery was effected from the petitioner but his name was nominated on the basis of disclosure statement made by the other co-accused Ramesh. However, learned State counsel has submitted that during investigation it was found that an amount of Rs.12 lakh was transferred by the petitioner in the name of one Ajay who is co-accused.

However, replying to the submissions made by the learned State counsel it has been contended by the learned counsel for the petitioner that the transfer of money by the petitioner to some other person would not mean that it was only for the purpose of the present contraband but it may be due to some commercial transaction and therefore it is no ground for connecting the petitioner with the present case. Learned State counsel further submitted that disclosure statements are not admissible in evidence as per the law laid down by Hon'ble Supreme Court in ***Tofan Singh versus State of Tamil Nadu, 2021 (1) R.C.R (Criminal) 1.***

I have heard the learned counsel for the parties.

The petitioner has been nominated on the basis of disclosure statement of a co-accused and in the earlier FIR also he was nominated on the basis of a disclosure statement in which he has been granted bail. Although, it is a case where the alleged recovery was 325 kgs. of Ganja, which is a commercial quantity and apart from that 393 kgs. of Ganja were also recovered from the agricultural fields. This Court would therefore consider the submissions of the learned counsel for the parties in the light of Section 37 of the NDPS Act. The petitioner has been nominated on the basis of a second disclosure statement and nothing has been recovered from him. The admissibility of such disclosure statement has been discussed in detail in the judgment passed by the Hon'ble Supreme Court in ***Tofan Singh (supra)***.

So far as the transfer of money by the petitioner to one of the other co-accused namely Ajay is concerned, there is neither anything on the record to show nor the State counsel has been able to address the arguments

that the same money was connected with the present case. At the time of the consideration of grant of bail to the petitioner it has to be seen as to whether a departure can be made under Section 37 of the NDPS Act or not. In the present case since the petitioner has been nominated purely on the basis of disclosure statement and as of now there is nothing on the record to show any other sufficient material available apart from disclosure statement, this would certainly be a prima facie ground at this stage for grant of bail to the petitioner by making a departure from the bar contained under Section 37 of the NDPS Act.

In view of the above and without commenting anything on the merits of the case the present petition is allowed. Consequently, the petitioner shall be released on regular bail on his furnishing bail/surety bonds to the satisfaction of learned trial Court/Illaq Magistrate/ Duty Magistrate, concerned.

(JASGURPREET SINGH PURI)
JUDGE

June 30, 2021
Manpreet

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No