

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-32166-2021
Date of Decision: 11.11.2021

Guddu Singh

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. P.K.S. Phoolka, Advocate, for the petitioner.

Mr. Randhir Singh Thind, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

An affidavit has been filed by the Deputy Superintendent of Police (Rural), Bathinda, District Bathinda on behalf of State of Punjab, which is taken on record.

At the outset, Mr. Randhir Singh Thind, learned Deputy Advocate General, Punjab has stated on instructions from SI Yusaf Mohammed that in pursuance of the orders passed by this Court on 16.08.2021 the petitioner has already joined investigation and he is fully cooperating with the investigation process and he is not required for custodial interrogation.

Since the subject matter of the present petition pertains to the alleged confiscation of 80 Kg. of poppy husk from the co-accused namely, Kalu Lal and Raju Singh, who were arrested and name of the petitioner was nominated on the basis of a disclosure statement, it will be necessary for this Court to consider the effect of Section 37 of the NDPS Act since the

recovered quantity was a commercial quantity under the NDPS Act.

The learned State counsel while referring to the affidavit filed by the State has submitted that it is correct that the name of the petitioner was nominated on the basis of a disclosure statement of co-accused Kalu Lal and as per the affidavit the only other evidence that links the petitioner with the present offence apart from the disclosure statement is 5 call details between the petitioner and the aforesaid Kalu Lal which have lasted for 92, 15, 6, 17 and 66 seconds from 11.06.2021 to 16.06.2021.

The learned counsel for the petitioner has submitted that the petitioner is a manufacturer of soaps and has got a number of customers and, therefore, these short span of calls with the other co-accused cannot create any presumption that the calls were intended for the present offence. He further submitted that there is no sufficient material available with the prosecution to connect the petitioner with the present offence. He has further submitted that the petitioner is not involved in any other case and the present case has been planted without any justification.

A perusal of the affidavit would also show that apart from the disclosure statement and the aforesaid 5 small duration calls, there is no sufficient material available at this stage to connect the petitioner with the present offence. Furthermore, the petitioner is not involved in any other case, which has not been denied by the learned State counsel. Therefore, in view of the aforesaid facts and circumstances of the present case, this Court is of a *prima facie* view that at least at this stage there are reasons to believe that the petitioner is not guilty of the present offence. So far as the second ingredient for making departure from the bar contained under Section 37 of the NDPS Act is concerned, since there is neither anything

contained in the affidavit nor it is the case of the State counsel that in case the petitioner is granted bail, then he may repeat the offence. Rather the learned State counsel has taken a specific stand that the petitioner has already joined the investigation and he is not required for custodial interrogation. Therefore, a departure can be made from the bar contained under Section 37 of the NDPS Act in the facts and circumstances of this case.

In view of the above, the present petition is allowed and the order dated 16.08.2021 is hereby made absolute.

11.11.2021

rakesh

(JASGURPREET SINGH PURI)**JUDGE**

Whether speaking

: Yes/No

Whether reportable

: Yes/No