

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(221)

CRM-M-32951-2021

Date of decision:- 15.09.2021

Jaswinder Singh @ Nanna

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Balbir Kumar Saini, Advocate
for the petitioner.

Mr. Prabhjot Singh Walia, AAG, Punjab.

...

SUVIR SEHGAL, J. (ORAL)

Instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 seeking grant of regular bail in case FIR No.0015 dated 22.02.2021 under Sections 15 and 15 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”), Section 29 of the NDPS Act was added later on, registered at Police Station Sadar Moga, District Moga.

As per the prosecution case, on basis of secret information, a raid was conducted at the residence of Gurpreet Singh and Sukhdev Singh, and recovery of 23 bags containing *poppy husk* weighing 20 kgs each was effected from them.

Counsel for the petitioner contends that the petitioner has neither been named in the FIR nor are there any allegations against the petitioner of indulging in sale, purchase or trade of prohibited substance. He submits that the petitioner was picked up from his residence and falsely framed on the basis of disclosure statement of co-accused, Gurpreet Singh and Sukhdev Singh. He submits that not only the petitioner but even his three brothers have been implicated on the basis of the confessional statement of the said co-accused. According to the counsel, such a statement recorded in police custody is inadmissible in evidence. He submits that though recovery of 5 k.g. of *poppy husk* has allegedly been effected from his house but the same falls within the ambit of non-commercial quantity and the bar as contained in Section 37(1)(b) of the NDPS Act is not applicable. By referring to para 20 of the petition, counsel for the petitioner contends that although the petitioner has been involved in two cases registered against him under the NDPS Act, but he stands acquitted in one and is on bail in the second case, in which he was nominated as an additional accused. In the third case pending against the petitioner for offences under Section 447, 506 and 34, IPC, counsel submits that he has been released on anticipatory bail. Counsel asserts that the petitioner is no longer required for custodial interrogation, as the challan has been presented, and the trial is likely to take time to conclude and the petitioner, who is in the custody since 18.04.2021, deserves to be enlarged on bail.

Per contra, learned State counsel, upon instructions from SI Balwinder Singh has opposed the petition on the ground that the

antecedents of the petitioner do not warrant his release on bail. He submits that the total quantity of substance recovered falls within the ambit of commercial quantity, though upon instructions he could not deny the fact that the petitioner has been nominated on the basis of disclosure statement of co-accused. Upon further instructions, he submits that challan against the main accused has been presented on 15.04.2021 and a supplementary challan against the petitioner has been presented on 15.06.2021, though the charge is yet to be framed.

Having considered the submissions of counsel for the parties, the Court is of the view that since the petitioner has been arraigned on the basis of a confessional statement, the legality and veracity of which is yet to be tested and the petitioner has been in custody since the last more than four months. As the trial is likely to take time to conclude, he is entitled to be released on bail during the pendency of the trial.

Without examining the merits or de-merits of the arguments addressed by the counsel for the parties, the petition is allowed. The petitioner, namely, Jaswinder Singh @ Nanna, is ordered to be released on bail on his furnishing adequate bail/surety bonds to the satisfaction of the Illaqa Magistrate/Duty Magistrate concerned.

While being released on bail, the petitioner will furnish an undertaking to the effect that henceforth he will not get involved in any criminal activity. In case, he violates the undertaking, it will be open to the prosecution to seek cancellation of the bail.

It is clarified that any observation made hereinabove shall not be construed to be a reflection of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

15.09.2021
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No