

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-39547-2021

Date of Decision:-16.12.2021

Satpal Singh @ Satta.

.....Petitioner.

Versus

State of Punjab.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Munish Raj Chaudhary, Advocate for the Petitioner.

Mr. H.S. Sullar, Deputy Advocate General, Punjab.

JASJIT SINGH BEDI, J.(ORAL)

The Prayer in this petition is for the grant of regular bail under Section 439 Cr.PC in case FIR No.66 dated 7.8.2021 under Sections 22, 61 and 29 of the NDPS Act, 1985 registered with Police Station Sadar Abohar, District Fazilka.

The Present FIR was registered at the instance of ASI Harbans Singh on the allegations that on 7.8.2021 he along with other police officials was present in the area of village Bahawalvasi where he received a secret information that Dara Singh and Harjit Singh who were habitual of selling intoxicating tablets would be coming from Delhi on a Canter bearing registration No.PB-03 AX-4646 along with intoxicating tablets and were going towards village Bhama via Malout and Abohar and if a raid is conducted immediately, the accused could be apprehended with huge

quantity of intoxicating tablets. Finding the information to be trustworthy a ruqa was prepared on the basis of which the present FIR was registered. Thereafter a raid was conducted at the appropriate place and Dara Singh and Harjit Singh got recovered 16140 intoxicating tablets.

Thereafter, the case of the prosecution is based on the disclosure statement of Dara Singh, the petitioner was nominated as an accused on the basis of DDR No.31 dated 8.8.2021. The petitioner was arrested on 8.8.2021 and is in custody since then and absolutely no recovery has been effected from him.

Counsel for the petitioner states that though the petitioner has been nominated as an accused on the basis of the disclosure statement of his co-accused, since no recovery has been effected from him, therefore, he deserves the concession of regular bail.

On the other hand learned State Counsel submits that the petitioner was a part of the gang selling intoxicating tablets and, therefore, does not deserve the concession of bail.

Having considered the rival contentions of both the parties, admittedly, the petitioner was not named in the FIR but was nominated as an accused on the basis of statement of his co-accused pursuant to which no recovery has been effected from him.

A perusal of the custody certificate of the petitioner would further reveal that he has undergone a total sentence of 04 months and 01 day as on 13.12.2021 and he is not involved in any other case. The case of the petitioner would also be covered by the decision of Hon'ble Apex Court in **Lohit Kaushal Vs. State of Punjab** 2009(17) SCC 106 and the relevant paragraph in that regard is reproduced hereinbelow:-

*“xxx 18. The primary question, which calls for consideration, is as to whether their statements can form the basis for a conviction. In addition to the fact that Satnam Kaur was discharged by the trial Judge on account of lack of evidence, we are of the opinion that so called disclosure statements made by both these women are hit by Section 25 & 26 of the Evidence Act, 1872, as they had the status of being statements made to the police, and nothing more and are, thus, no admissible in evidence. **It will be seen that a statement made to the police can only be used to the limited extent provided under 27 of the Evidence Act and that too only against the person making the statement.xxx”***

Similarly in the case of **Surinder Kumar Khanna Vs. Intelligence Officer Directorate of Revenue Intelligence 2018(3) RCR (Criminal) 954** the Hon'ble Apex Court in para no.14 while acquitting the accused held as under:-

“ In the present case it is accepted that apart from the aforesaid statements of co-accused there is no material suggesting involvement of the appellant in the crime in question. We are thus left with only one piece of material that is the confessional statements of the co-accused as stated above. On the touchstone of law laid down by this Court such a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be used or utilized in order to lend assurance to the Court. In the absence of any substantive evidence it would be inappropriate to base the conviction of the appellant purely on the statements of co-accused. The appellant is therefore entitled to be acquitted of the charges leveled against him. We, therefore, accept this appeal, set aside the orders of conviction and sentence and acquit the appellant. The appellant shall be released forthwith unless his custody is required in connection with any other offence. ”

As the present case is a case of no recovery, the rigors of Section 37 of NDPS Act may not be attracted to the present case.

Therefore, without commenting upon the merits of the case, keeping in view

the custody period and the fact that the trial is not likely to be concluded in near future, the present petition is allowed and the petitioner **Satpal Singh @ Satta** is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, Fazilka.

It is further made clear that if petitioner indulges in similar offence for which he is currently charged, the State would be at liberty to move an application for cancellation of bail.

(JASJIT SINGH BEDI)
JUDGE

December 16, 2021
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>