

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(236)

CRM-M-40399-2021

Date of decision:- 27.10.2021

Bittu Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Preetwinder Singh Dhaliwal, Advocate for the petitioner.

Mr. Sarabjit Singh Cheema, AAG, Punjab.

...

SUVIR SEHGAL, J. (ORAL)

Instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.80 dated 02.07.2021 under Sections 21, 22, 25 and 29 (Act No.61 of 1985) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”), registered at Police Station Barnala, District Barnala.

As per the version of the prosecution, FIR, Annexure P-1, has been registered on the basis of a secret information that Manpreet Dass @ Mani, Jagsir Singh and Bittu Singh (present petitioner) are indulging in sale of intoxicating tablets in the area of village Pharwahi and Shekha etc. and that they are on a motorcycle and can be apprehended with contraband. Thereupon, Manpreet Dass @ Mani and Jagsir Singh, were apprehended and recovery of 1200 tablets and 30 grams of intoxicating substance was made from them.

Counsel for the petitioner contends that though the petitioner is named in the FIR, which has been lodged on the basis of secret information, yet he was not arrested with the co-accused from the spot. He submits that the petitioner has been arraigned as an accused on the basis of the disclosure statement of Manpreet Dass @ Mani, which was recorded two days later, and the petitioner was arrested on 02.08.2021. It is his argument that the statement of a co-accused, recorded in custody, is hit by Section 25 of the Evidence Act, 1872. He asserts that the petitioner, who has clean antecedents, is no longer required for custodial interrogation as investigation qua him is complete and the challan has been presented.

Per contra, learned State counsel, upon instructions from, ASI Nirmal has opposed the petition and submits that the total weight of recovered tablets and powder, which was found to be containing salt Tramadol Hydrochloride, was more than 500 grams and as the bar under Section 37 of the NDPS Act is applicable, the petitioner cannot be released on bail. As per his instructions, though no recovery has been effected from the petitioner, but he was riding the motorcycle with the co-accused and alighted therefrom shortly before both the co-accused were apprehended. Upon further instructions, he submits that the motorcycle on which the co-accused were travelling is registered in the name of father of co-accused, Manpreet Dass @ Mani. He submits that the challan has been presented on 22.10.2021, though the charge is yet to be framed.

I have considered the respective submissions of counsel for the parties.

Petitioner is being sought to be implicated on the basis of a confessional statement of a co-accused, the legality and veracity of which is yet to be tested. As no recovery has been effected from the petitioner, the bar as contained in Section 37 of the NDPS Act is not applicable as has been held by a Division Bench of this Court in ***Dharamveer and another versus State of Punjab 2015 SCC Online P & H 5226***. The petitioner, who has an unblemished past, and is in custody since the last more than two months, deserves to be enlarged on bail as the case is likely to take time to conclude.

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

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

27.10.2021

Kamal

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