

CRM-M-720-2021 (O&M)

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

**CRM-M-720-2021 (O&M).
Decided on: June 28, 2021.**

Krishna Devi

.. Petitioner

VERSUS

State of Punjab

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.J.S.Bhandohal, Advocate,
 for the petitioner.**

Mr.Randhir Singh Thind, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail in FIR No.134 dated 15.10.2020, under Sections 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Special Task Force, District STF Wing (PS Mohali) District Mohali.

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case and the recovery of contraband, if any, was from one Lakhwinder Kaur @ Lakho (wrongly

typed as Sukhwinder Kaur in the body of the petition). He has submitted that so far as petitioner is concerned, she has been falsely implicated in the present case purely on the basis of disclosure statement made by the aforesaid co-accused namely Lakhwinder Kaur @ Lakho. He has submitted that there is no other evidence available with regard to the involvement of the petitioner apart from the disclosure statement. He has further submitted that said disclosure statement is not admissible in evidence as has been laid down by the Hon'ble Supreme Court in *Tofan Singh Vs. State of Tamil Nadu, 2021 (1) RCR (Crl.) 1.*

He has submitted that case of the petitioner is more than prima facie case for acquittal because the entire prosecution is based upon the disclosure statement made by the co-accused which is not admissible in evidence. He has further submitted that although the alleged recovery from the co-accused was 5800 intoxicating tablets which was a commercial quantity but the case of the petitioner was not hit by Section 37 of the NDPS Act and rather it was covered by the exceptions contained under Section 37 of the NDPS Act.

Notice of motion was issued on 8.1.2021 and the petitioner was granted interim protection.

On that day, the learned State counsel had opposed the grant of anticipatory bail on the ground that the petitioner has misused the concession of bail in another FIR No.108 of 8.7.2018.

Learned counsel for the petitioner has submitted that the petitioner never misused the concession of bail and the learned State

CRM-M-720-2021 (O&M)

counsel was referring to the lodging of the present FIR in which the petitioner was involved which according to the learned State counsel at that time was misuse of the concession of bail. The learned counsel has further submitted that so far as the present case is concerned, it cannot be termed as misuse of concession of bail because in the present case the petitioner has been roped in only on the basis of disclosure statement which was not admissible in evidence and there was no other material available apart from the disclosure statement.

Learned State counsel, on instructions from ASI Avtar Singh, has submitted that in pursuance of order dated 8.1.2021, the petitioner has already joined the investigation and he is no longer required for custodial investigation and is cooperating with the investigation process. He has submitted that it is correct that petitioner was named as an accused on the basis of disclosure statement made by the co-accused namely Lakhwinder Kaur @ Lakho.

I have heard the learned counsel for the parties.

The State has taken up a stand that the petitioner in pursuance of order dated 8.1.2021 has already joined the investigation and is no longer required for custodial investigation and she has cooperated with the investigation process. However, the Court has to see as to whether grant of bail is hit by Section 37 of the NDPS Act or not. In the facts and circumstances of the present case, the petitioner was nominated as an accused on the basis of disclosure statement made by the co-accused from whom alleged recovery of commercial quantity was made. There is nothing

CRM-M-720-2021 (O&M)

on the record to show nor it is the case of the State that there is any other evidence to link the petitioner with the alleged contraband apart from the disclosure statement at this stage. Section 37 of the NDPS Act, bars the grant of bail but a departure can be made in case the exceptions contained therein are satisfied.

In the present case, the petitioner has been able to make out a prima facie case that the petitioner may be acquitted at the time of trial because the entire case is based upon the disclosure statement of the co-accused and there is no other material that the petitioner is involved in the case on the basis of some other evidence. The Hon'ble Supreme Court in **Tofan Singh (supra)** has also discussed the entire law with regard to the admissibility of the disclosure statement of co-accused especially in the NDPS matters.

In view of above, this Court is satisfied that at this stage, a departure can be made from the bar contained under Section 37 of the NDPS Act more so when it is the stand of the state itself that the petitioner is not required for custodial investigation because the petitioner has already cooperated with the investigation process.

Therefore, in view of above, the present petition is allowed and the order dated 8.1.2021, whereby the petitioner was granted interim bail is hereby made absolute.

June 28, 2021.
raj arora

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No