

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-3716-2022 (O&M)
Date of Decision: 13.09.2022

Sukhpal Singh

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. S.K. Passi, Advocate, for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

The present is a second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No. 73 dated 06.05.2021, under Section 22 (c) of NDPS Act (Section 29 of NDPS Act added later on), registered at Police Station Sangat, District Bathinda.

The learned counsel for the petitioner has submitted that the petitioner is in custody for about 1 year and 4 months and he was arrested on 06.05.2021. He further submitted that the allegations against the petitioner were that he was a bus conductor which had a route from Delhi to Ferozepur and that in his bus he had brought the alleged confiscated contraband. He further submitted that the alleged contraband was confiscated from one co-accused namely Sagar and it was on his disclosure

statement the name of the petitioner was nominated. He further submitted that the petitioner is not involved in any other case and has got clean antecedents and except for disclosure statement the investigating agency does not have any other sufficient material to connect the petitioner with the alleged offence. He further submitted that the petitioner was nominated purely on the basis of disclosure statement which is not admissible in evidence per se in view of the law laid down by the Hon'ble Supreme Court in *Tofan Singh Vs. State of Tamil Nadu [2021 (1) RCR (Crl) 1]*. He further submitted that the investigation of the case has been completed and challan has been presented and in view of the custody of the petitioner, he may be considered for the grant of regular bail especially considering the fact that he has got clean antecedents.

On the other hand, Mr. Kunal Viyanak, learned Assistant Advocate General, Punjab has filed custody certificate which is taken on record as per the custody certificate, the petitioner has undergone 1 year, 4 months and 1 day and he is not involved in any other case. The learned State counsel has referred to the affidavit filed by the State wherein it has been stated that the name of the petitioner has been nominated on the basis of disclosure statement of the co-accused namely Sagar and it has also been stated in the affidavit that there were telephonic conversations of the petitioner with the brother of the aforesaid co-accused namely Aman Kumar who is also a co-accused in the present case and on the date of recovery also there was two telephonic conversation between them which has been stated in the affidavit.

The learned counsel for the petitioner has submitted that the petitioner is only a conductor of the bus and no presumption can be drawn

on the ground that only two telephonic calls were made by the petitioner with the brother of the accused person from whom there was alleged recovery of contraband and besides the same, there is no conversation or recording available with the investigating agency with regard to the same and therefore, except for disclosure statement of a co-accused there is nothing with the investigating agency to connect the petitioner with the alleged offence.

I have heard the learned counsel for the parties.

The petitioner is in custody for about 1 year and 4 months. The investigation of the case has been completed. The petitioner is not involved in any other case and has got clean antecedents. The alleged recovery was made from the co-accused namely Sagar which falls in the category of commercial quantity. Therefore, the effect of Section 37 of the NDPS Act is required to be considered for the purpose of considering the prayer of the learned counsel for the petitioner for grant of regular bail. So far as the first ingredient is concerned, the name of the petitioner was nominated on the basis of disclosure statement of the co-accused. The said statement of a co-accused would not be admissible in evidence per se in view of the judgment of the Hon'ble Supreme Court in *Tofan Singh Vs. State of Tamil Nadu (Supra)*. So far as the other factor with regard to two telephone calls with the brother of the aforesaid co-accused Sagar and the petitioner is concerned, no presumption can be drawn at this stage that it was pertaining to the offence since the petitioner is stated to be a conductor of the bus and is also not involved in any other case. There is neither any recording nor any other conversation available on record and the petitioner has already undergone 1 year 4 months and 1 day. Therefore, this Court is of the view that

prima facie there are reasons to believe at this stage that the petitioner is not guilty of offence. So far as the second ingredient is concerned, the petitioner is not involved in any other case nor it is the case of the State that in case the petitioner is released on bail, then he may repeat the offence. Even in the affidavit filed by the State there is no such apprehension expressed by the State in this regard. Therefore, both the ingredients for making a departure from the bar contained under Section 37 of the NDPS Act remain satisfied.

In view of the aforesaid facts and circumstances, this Court deems it fit and proper to grant regular bail to the petitioner.

Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

All the miscellaneous applications, if any, shall be deemed to be disposed of since the main case has been disposed of.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

13.09.2022

rakesh

(JASGURPREET SINGH PURI)**JUDGE**

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No