

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

220

CRM-M-7048-2022

Date of Decision : **May 10, 2022**

KULBIR SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. P.S.Sekhon, Advocate
for the petitioner.

Mr. Davinder Bir Singh, DAG, Punjab.

JASGURPREET SINGH PURI. J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.66 dated 1.6.2021 under Section 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Sadar Sangrur, District Sangrur.

It has been submitted by the learned counsel for the petitioner that the petitioner is in custody from 1.12.2021 which is almost 6 months and the investigation of the case has been completed and challan has been filed before the competent Court. He has submitted that it is a case where the petitioner was not named in the FIR and his name was nominated on the basis of a disclosure statement made by the co-accused and from the two co-accused who were allegedly caught on the spot there was a recovery of 4000 tablets of tramadol which falls in the category of commercial quantity. He further submitted that so far as the

present petitioner is concerned, his name was nominated purely on the basis of disclosure statement and there is nothing available with the police to connect the petitioner with the present offence except from the disclosure statement. He submitted that the said disclosure statement of a co-accused is not admissible in evidence per-se and the law with regard to the permissibility of disclosure statement has been discussed in detail by the Hon'ble Supreme Court in *Tofan Singh Vs. State of Tamil Nadu, 2021 (1) RCR (CrL) 1.*

Learned counsel further submitted that the petitioner has clean antecedents and he is not involved in any other case whatsoever and it was only on the basis of a disclosure statement of a co-accused his name has been nominated and now the bar contained under Section 37 of NDPS Act will not be applicable to the petitioner. He further submitted that in the present case the State has also filed an affidavit in the form of reply and in the affidavit the State has taken up the plea that from 15.5.2021 to 1.6.2021 when the alleged offence has taken place qua the co-accused when the other co-accused were apprehended there were some call details between the two co-accused who were allegedly caught and the petitioner. As per the affidavit, the petitioner had made 5 phone calls and one SMS to co-accused, namely, Ravi Kumar @ Kala and the aforesaid Ravi Kumar @ Kala also made 9 phone calls to the petitioner both sides. He further submitted that the mere fact that some 5+9 phone calls were exchanged with the co-accused, namely, Ravi Kumar @ Kala would not mean that the petitioner is also involved in the present case. He submitted that such a material available with the prosecution is not a

sufficient material to connect the petitioner with the present case and apart from the aforesaid phone calls there is nothing available with the prosecution and nothing has come up in the affidavit filed by the State to connect the petitioner with the present offence. He further submitted that even as per the affidavit filed by the State itself in para No.5 of the affidavit it has been specifically stated that there is no criminal case found to be registered against the petitioner and, therefore, the petitioner has clean antecedents. Learned counsel in order to substantiate his arguments has further relied upon the judgment of the Hon'ble Supreme Court in **State by Intelligence Officer, Narcotics Control Bureau Vs. Munees Kavil Paramabath @ Munees KP, decided on 10.1.2022**. He submitted that in that case the bail was granted to the accused by making a departure from the bar contained under Section 37 of NDPS Act which was assailed by the NCB before the Hon'ble Supreme Court and it was observed that the disclosure statement per-se would not be permissible in evidence and the authenticity of these CDR/phone details is to be seen at the time of the trial and, therefore, the accused in that case was granted bail by making a departure from the bar contained under Section 37 of NDPS Act. He submitted that in the present case as well apart from the aforesaid 5+9 phone calls there is nothing with the State to connect the petitioner with the offence and the nature and the details of these calls can be seen only at the time of trial and considering the clean antecedents of the petitioner the bar contained under Section 37 of NDPS Act will not be applied to the petitioner.

On the other hand, the learned State counsel has submitted

that it is correct that the petitioner is in custody from 1.12.2021 and it is also correct that the petitioner is not involved in any other case. However, he has submitted that the calls exchanged between the petitioner and the co-accused would constitute a sufficient material for the purpose of connecting the petitioner with the present offence and, therefore, the bar contained under Section 37 of NDPS Act will apply in the present case.

I have heard the learned counsels for the parties.

The petition is in custody from 1.12.2021 and now the case is fixed for prosecution evidence. Admittedly, the petitioner has clean antecedents and is not involved in any other case even as per the affidavit filed by the State. The name of the petitioner was nominated purely on the basis of a disclosure statement made by co-accused. The disclosure statement of a co-accused per-se is not admissible in evidence. For the purpose of considering the bar contained under Section 37 of NDPS Act, this Court has to see as to whether apart from the disclosure statement, there is any other sufficient material available with the prosecution to connect the petitioner at this stage or not. The only material as put forth by the prosecution is the mobile phone calls between the petitioner and the co-accused, namely, Ravi Kumar @ Kala which are 5+9 in number and ranging from 15.5.2021 to 1.6.2021 i.e. for two weeks. Even as per the story put forth by the State, the co-accused had purchased the intoxicant material from the petitioner on credit and not by way of any money transaction. The Hon'ble Supreme Court in Munees Kavil Paramabath @ Munees KP's case (Supra) while dealing with the

aforesaid similar kind of situation held that the CDR details of some of the accused are to be examined at the stage of trial. In the present case apart from the aforesaid 5+9 phone calls there is no other material available with the prosecution atleast at this stage to connect the petitioner with the offence. The disclosure statement of a co-accused would certainly be not admissible in evidence per-se. The total number of calls are also spread over a period of more than 2 weeks. Therefore, this Court is of the view that atleast at this stage there are prima facie reasons to believe that the petitioner is not guilty of the offence. So far as the second ingredient for making a departure from the bar contained under Section 37 of NDPS Act is concerned, it is not the case of the State that in case the petitioner is released on bail then he may repeat the offence or may influence any witness. Even a perusal of the affidavit filed by the State nothing has been stated with regard to any such kind of apprehension nor the learned State counsel has raised any such plea. Therefore, the second ingredient for making a departure from the bar contained under Section 37 of NDPS Act also remained satisfied. Therefore, this Court is of the view that the bar contained under Section 37 of the NDPS Act will not be applicable to the petitioner in the present case.

As per the learned counsel for the parties, the investigation of the case is complete and challan has been presented.

Consequently, the present petition is allowed. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial

Court/Duty Magistrate.

However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

May 10, 2022
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(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No