

**111+208 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M-7198-2019 (O&M)
Date of Decision: 17.03.2022**

Sukhchain Singh @ Sonu

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURIPresent: Mr. P.S. Sekhon, Advocate
for the petitioner.

Mr. Sidakmeet Singh Sandhu, AAG, Punjab.

JASGURPREET SINGH PURI, J.(ORAL)**CRM-10143-2022**

Application for placing on record Annexure A-1 and A-2 is allowed. Document Annexures A-1 and A-2 are taken on record.

Main Case

The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No.111, dated 27.10.2018 under Sections 22 and 29 of NDPS Act, registered at Police Station Mehna, District Moga.

It has been submitted by learned counsel for the petitioner that in the present case, the petitioner is in custody for the last 2 years 11 months and 14 days. He submitted that the aforesaid period is calculated after excluding the interim bail, which was granted by this Court on 12.09.2019. He submitted that after the interim bail was granted to the petitioner, the police again implicated the petitioner in a false case i.e. FIR No.197, dated 06.10.2019 and

he was taken into custody and in the aforesaid FIR, he has since been granted

MANPREET SINGH
2022.03.17 18:07
I attest to the accuracy of
this order.

bail by this Court in CRM-M-26702 of 2021 on 24.01.2022 and therefore, on taking the petitioner into custody in the aforesaid case, his interim bail ceased to operate.

Learned counsel has submitted that it is a case where police has apprehended two persons namely, Buta Singh and Harjiwan Singh along with 919 loose tablets and it was on the basis of the disclosure statement made by one of the co-accused namely, Harjiwan Singh that the name of the petitioner was nominated in the present FIR. He further submitted that the disclosure statement of co-accused would not be admissible in evidence in view of the law laid down by Hon'ble Supreme Court in **Tofan Singh vs. State of Tamil Nadu, 2021 (1) R.C.R. (Criminal) 1**. He further submitted that there is no other incriminating material against the petitioner. However, the police after arresting the petitioner planted 1000 loose tablets of Tramadol against the petitioner on the basis of alleged disclosure statement made by the petitioner in the police custody. He has however referred to Annexure A-2, which is the statement of the petitioner under Section 27 of the Indian Evidence Act, 1872 and a perusal of the same would show that a stolen motor-cycle was recovered and there was no reference to any tablets and therefore, the entire case has been planted against the petitioner. Apart from the same, he further submitted that only a sample of loose 10 tablets were sent to the forensic laboratory out of the total loose tablets, which had no trade name or trade mark etc. or batch number and therefore, his case would also be covered by the law laid down by Division Bench of this Court in **State of Punjab vs. Dharam Singh, 2010 (3) R.C.R. (Criminal) 94**. He further submitted that in view of the aforesaid submissions, the prayer of the petitioner for grant of bail would not be hit by the bar contained under Section 37 of the NDPS Act.

Learned State counsel has submitted that it is correct that the petitioner is in custody for the last 2 years 11 months and 14 days and has also filed custody certificate, which is taken on record. He submitted that since the petitioner is also involved in one other case, he is not entitled for the grant of regular bail.

I have heard the learned counsel for the parties.

The petitioner has faced incarceration of 2 years 11 months and 14 days and as per the learned State counsel, only two witnesses out of 27 have been examined till date. The prayer of the petitioner for grant of bail has to be considered by taking into consideration the bar contained under Section 37 of the NDPS Act, since the alleged quantity was commercial in nature. The petitioner's name was nominated on the basis of the disclosure statement of the co-accused and the State has not been able to bring out any other sufficient material to connect the petitioner with the present case, apart from the disclosure statement. A perusal of the disclosure statement A-2 would show that the petitioner after taking into custody has made a statement under Section 27 of the Indian Evidence Act, 1872 pertaining to one motor-cycle and there is no mention with regard to 1000 tablets, which is alleged to have recovered from the petitioner. Furthermore, only 10 tablets were drawn out from the loose tablets having no batch number, no trade mark etc. and as per the forensic report Annexure A-1, it was mentioned that only 10 loose tablets were sent and therefore, the case of the petitioner would also be covered by the judgment of Division Bench of this Court passed in **State of Punjab vs. Dharam Singh, 2010 (3) R.C.R. (Criminal) 94**. So far as the second ingredient from making departure from Section 37 of the NDPS Act is concerned, although, the petitioner was involved in another NDPS case after the registration of the present FIR but he has been granted bail in that case by

this Court and in that case also, as per the learned counsel for the parties, the name of the petitioner was nominated on the basis of disclosure statement. Therefore, at this stage, a departure can be made from the bar contained under Section 37 of the NDPS Act, since this court has prima facie reasons to believe that the petitioner is not a guilty of an offence at least at this stage. Apart from the same, the petitioner has faced incarceration of about three years and only two witnesses have been examined in the present case and therefore, the trial of the case would take long time. Furthermore, the State has not raised any objection that in case the petitioner is released on bail then he may flee from justice or may influence any witness or may tamper with evidence.

Therefore, considering the totality of facts and circumstances of the present case, this Court deems it fit and proper to grant bail to the petitioner. Consequently, the present petition is allowed and the petitioner is released on bail on his furnishing adequate bail/ surety bonds to the satisfaction of the learned trial Court/ Chief Judicial Magistrate/ Duty Magistrate, concerned.

At this stage, learned counsel for the petitioner has stated that the provisions of Sections 379 and 411 IPC were added at the time of presentation of the challan but the same is not mentioned in the head note and in the prayer clause of the petition and therefore has requested that the head note and prayer clause of the petition be read as Sections 22 and 29 of NDPS Act, 1985 and Sections 379 and 411 of IPC, 1860.

Learned State counsel has stated that he has no objection in case the aforesaid sections are added in the head note and prayer clause of the petition.

Therefore, in the head note and in the prayer clause of the petition, the offences under Sections 22 and 29 of NDPS Act, 1985 be read as Sections 22 and 29 of NDPS Act, 1985 and Sections 379 and 411 of IPC, 1860.

It is made clear that the aforesaid observations would not mean anything on the merits of the case, as the same are only for the purpose of deciding the present petition.

(JASGURPREET SINGH PURI)
JUDGE

March 17, 2022

Manpreet

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