

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

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CRM-M-12646-2022

Date of Decision : July 20, 2022

Sanjeev @ Parva

.....Petitioner

VERSUS

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr.Parveen Sharma, Advocate
for the petitioner.

Mr.N.S.Panwar, DAG Haryana

JASGURPREET SINGH PURI . J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.27 dated 11.02.2019 under Section 15 of the NDPS Act, 1985 (Section 20 of the NDPS Act was added by deleting Section 15 of the NDPS Act later on), registered at Police Station Israna, District Panipat.

It has been submitted by the learned counsel for the petitioner that the petitioner is in custody since 29.09.2021 and the investigation of the case has been completed but the charges have not been framed till date, although the challan was presented in the month of November 2021. He further submitted that there was no recovery from the petitioner and his name was nominated only on the basis of the disclosure statement of the other co-accused who was caught on the spot. Even otherwise the recovery from the other co-accused was of 1.2 kgs of charas and the commercial quantity under NDPS Act is 1 kg. He submitted that there is no sufficient material available with the police to

connect the petitioner to the present offence except for the disclosure statement and such a disclosure statement of the co-accused is not admissible in evidence and he relied upon the judgment of the Supreme Court in the case of ***“Tofan Singh vs. State of Tamil Nadu”, 2021(1) RCR (Criminal) 1.*** He further submitted that earlier the petitioner was involved in another case under the NDPS Act and there was a recovery of 1.2 kgs of charas from the co-accused and in that case also he was nominated on the basis of the disclosure statement. He submitted that due to a rivalry with the police officials, the case has been planted upon the petitioner and in the absence of any cogent evidence to connect the petitioner, the bar contained under Section 37 of the NDPS Act, would not apply particularly in view of that there was no recovery from the conscious possession of the petitioner. He submitted that in view of the aforesaid facts and circumstances, the petitioner may be considered for grant of regular bail.

On the other hand, Mr. N.S. Panwar, DAG, Haryana, has submitted that it is correct that the petitioner is in custody since 29.09.2021 and the challan in the present case was presented in November 2021, but the charges have not been framed. He further submitted that so far as the present petitioner is concerned, his name was nominated on the basis of the disclosure statement of the other co-accused from whom there was a recovery 1.2 kgs of charas and the petitioner is also involved in three more cases which are not under the NDPS Act but are pertaining to Sections 279, 304-A and 365 IPC.

I have heard the learned counsel for the parties.

The name of the petitioner was nominated on the basis of the disclosure statement of the co-accused. On a specific query being raised to the learned State counsel as to whether during the course of investigation any other cogent and sufficient material is available with the police to connect the petitioner with the present offence, apart from the disclosure statement or not, learned State counsel, on instructions from ASI Amrit Lal, stated that no such evidence is available and prosecution of the petitioner is being carried out purely on the basis of the disclosure statement of the co-accused.

The scope of Section 67 of the NDPS Act has been dealt with in detail by the Hon'ble Supreme Court in Tofan Singh's case (**supra**). It is a settled law that the disclosure statement of a co-accused is *per se* not admissible in evidence. In the present case there is no evidence or any other sufficient material available with the police to connect the petitioner with the present offence apart from the disclosure statement as per the learned State counsel.

Therefore, for making a departure from the bar contained under Section 37 of the NDPS Act, two ingredients need to satisfy. So far as the first ingredient is concerned, the facts of the present case suggest that apart from the disclosure statement of the co-accused, there is no sufficient material available with the police to connect the petitioner to the present offence and it is a settled law that the disclosure statement of a co-accused is not admissible in evidence. Consequently, this Court is of the considered view that at least, at this stage, there are reasons to believe

based upon the facts and circumstances of the present case that the petitioner is not guilty of the offence. So far as the second ingredient is concerned, it is not the case of the State that in case the petitioner is released on bail, he may repeat the offence or flee from justice or tamper any evidence. Therefore, both the ingredients of making the departure from the bar contained under Section 37 of the NDPS Act remain satisfied. The pendency of the other case under the NDPS Act would not become a ground for denial of bail to the petitioner in view of the fact that as per learned counsel for the parties in that case also he was nominated on the basis of the disclosure statement of the co-accused.

Considering the facts and circumstances of the case, this Court is of the view that the petitioner is entitled for grant of regular bail. 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.

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.

(JASGURPREET SINGH PURI)
JUDGE

20.07.2022

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