

230 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-24882-2022

Date of Decision: 29.11.2022

Rinku Singh

.....Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sukhjit Singh, Advocate and
for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present is the 2nd petition filed under Section 439 of Code of Criminal Procedure for seeking grant of regular bail in case FIR No.25 dated 13.03.2021 under Section 22, 25 of NDPS Act 1985 (Section 29, 61 and 85 of NDPS Act, 1985 added later on) registered at Police Station Dhanaula, District Barnala.

Learned counsel for the petitioner submitted that the petitioner is in custody from 13.04.2021 which is almost 1 year and 7 months. Learned counsel submitted that the petitioner is not involved in any other case and the present case has been planted upon the petitioner. He submitted that the police apprehended two persons namely Bikramjit Singh @ Bikkar and Harpreet Singh @ Happy and from them there was alleged recovery of about 10,000 tablets of Tramadol and it was on the basis of disclosure statement of one of the co-accused that the petitioner's name was nominated. Learned counsel further submitted that thereafter police planted 1350 tablets of Tramadol on the petitioner in order to implicate him falsely in the present case. He submitted that no sufficient evidence is available with the police to connect the

petitioner with the present offence except for the disclosure statement of the co-accused which is otherwise not admissible in evidence in view of the law laid down by the Hon'ble Supreme Court judgment in **Tofan Singh Vs. State of Tamilnadu 2021 (1) RCR (Cri.)1** He submitted that so far as recovery of 1350 tablets of Tramadol is concerned, the same was planted upon the petitioner when he was in custody.

On the other hand, Mr. Amit Rana, Sr. DAG, Punjab. on instructions from ASI Balwinder Singh has submitted that it is correct that petitioner is in custody for the last 1 year and 7 months and now two witnesses have already been examined. He has further submitted that it is also correct that the petitioner is not involved in any other case under the NDPS Act.

On a query being raised to the learned State counsel during the course of arguments that as to how the petitioner is connected apart from the disclosure statement of co-accused, he submitted on instructions that apart from the disclosure statement of the co-accused, there is no evidence available with the police to connect the petitioner to the present case. However, the recovery was made under section 27 of the Evidence Act whereby there was recovery of 1350 tablets Tramadol.

I have heard the learned counsels for the parties.

The petitioner is stated to be in custody for the last about 1 year and 7 months and two witnesses have already been examined. The petitioner is also stated to be involved in the present case on the basis of disclosure statement of the co-accused which is otherwise not admissible in evidence *per se* in view of the judgment of Hon'ble Supreme Court in **Tofan Singh (supra)** .

On a specific query being raised to the learned State counsel as to whether

there is any sufficient material available with the police to connect the petitioner with the recovery of contraband from the co-accused, the State counsel has stated that there is no such material available but there was a recovery of 1350 tablets of Tramadol from the accused after his arrest on the basis of his own disclosure statement.

From the facts as stated by the learned counsels for the parties especially the State counsel that there is no material available with the police to connect the petitioner with the offence of confiscation from co-accused except for his disclosure statement, this Court has therefore reasons to believe at least at this stage that petitioner is not guilty of offence. Furthermore, it is not the case of State that in case petitioner is released on bail, then he may abscond or repeat the offence. Therefore, this Court is satisfied that the bar contained under Section 37 of NDPS Act will not apply in the present case.

In view of the aforesaid facts and circumstances, this Court is of the view, that the petitioner deserves the concession 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 herein above shall not be treated as an expression of opinion on merits of the case & is only meant for the purpose of decision of present petition.

29.11.2022
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(JASGURPREET SINGH PURI)
JUDGE

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No