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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-30688-2022
Date of Decision: 09.11.2022

LAKHVIR KARARA

....Petitioner(s)

Versus

STATE OF PUNJAB

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sahil Puri, Advocate, for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

Status report has been filed which is taken on record.

Copy has been supplied to the learned counsel for the petitioner.

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. 147 dated 28.09.2019, under Sections 21, 22, 61, 29 of NDPS Act, registered at Police Station Satnampura, Phagwara, District Kapurthala.

It has been submitted by the learned counsel for the petitioner that the petitioner is in custody for about 6 months and 21 days and investigation of the case has already been completed and thereafter, the challan has been presented and even charges have been framed by the learned Special Court. He further submitted that it is a case where the police party had apprehended three persons on the spot in a Innova Car from

where there was an alleged recovery of 5 grams of ICE, apart from recovery of Rs. 36,000/- from the dash-board and 50 intoxicant injections of *Burpenorphine Hydrochloride* were also recovered. He further submitted that as per the prosecution one of the co-accused had got recorded disclosure statement and thereafter, the name of the present petitioner was nominated as an accused. He further submitted that the petitioner has been falsely implicated in the present case and he is having clean antecedents and is not involved in any other case and it is a settled law that disclosure statement of a co-accused is not admissible in evidence *per se* and has also referred to the judgment of the Hon'ble Supreme Court in the case of ***Tofan Singh V/s. State of Tamil Nadu' [2021 (1) RCR (Criminal)1]*** . He further submitted that apart from the same, there is no other evidence available with the State to link the present petitioner with the present offence except for the disclosure statement of a co-accused which is not admissible. He further referred to the status report filed by the State which also states that the name of the petitioner has surfaced on the basis of a disclosure statement of a co-accused but there is nothing in the affidavit to state as to how the petitioner is connected with the present offence except for the disclosure statement of a co-accused. He submitted that in view of the aforesaid facts and circumstances, the petitioner may be considered for the grant of regular bail since rigor of Section 37 of the NDPS Act will not apply even although the alleged recovery falls in the category of commercial quantity under the NDPS Act.

On the other hand, Mr. Kunal Vinayak, learned Assistant Advocate General, Punjab has submitted that it is correct that the petitioner is in custody for about 6 months and 21 days and now the charges have

been framed by the learned Special Court. He also submitted the custody certificate of the petitioner and as per the custody certificate, the petitioner is not involved in any other case. He further submitted that it is also correct that the name of the petitioner has surfaced on the basis of a disclosure statement of the co-accused namely, Des Raj @ Vicky and Vijay Kumar in which they stated that the present petitioner is indulged in illicit trade of drugs and the learned State counsel while referring to the affidavit filed by the State submitted that as per the disclosure statement the recovered amount of Rs. 36,000/- from the car was to be distributed equally among all the accused including the petitioner. He further submitted that the regular bail of the other co-accused namely Des Raj @ Vicky was dismissed by this Court especially considering the rigor of Section 37 of the NDPS Act and the antecedents of the petitioner of that case namely Des Raj @ Vicky.

I have heard the learned counsel for the parties.

The petitioner is in custody for about 6 months and 21 days and the learned Special Court has already framed the charges. Although there was a recovery which falls in the category of commercial quantity under the provision of the NDPS Act and the regular bail of the other co-accused has been dismissed by this Court but the case of the present petitioner has to be considered in the light of facts and circumstances qua the present petitioner by considering the effect of Section 37 of the NDPS Act. It is a case where the police party had apprehended three persons from whom there was alleged recovery of 5 grams of ICE, apart from recovery of Rs. 36,000/- from the dash-board and 50 intoxicant injections of *Burpenorphine Hydrochloride* were also recovered. A perusal of the affidavit filed by the

of disclosure statement of co-accused namely, Des Raj @ Vicky and Vijay Kumar. Apart from the aforesaid disclosure statement of the co-accused, there is nothing to suggest even in the affidavit filed by the State to show as to how the present petitioner has been connected with the present offence except for the disclosure statement of the co-accused. The learned State counsel also during the course of arguments has submitted that he has sought instructions from the concerned I.O who has also stated that there is nothing to connect the petitioner with the present offence except for the disclosure statement. This Court does not wish to go into the merits of the case but only for the purpose of considering the petition for grant of regular bail, the aforesaid factors are required to be considered since this Court is considering the effect of Section 37 of the NDPS Act especially in view of the fact that the other co-accused namely Des Raj @ Vicky also filed a petition for grant of regular bail before this Court which has been dismissed on the ground of bar contained under Section 37 of the NDPS Act and also considering the antecedents of the co-accused namely Des Raj @ Vicky.

In the present case the petitioner is stated to be not involved in any other case and he is having clean antecedents. It is settled law especially in the matters pertaining to the NDPS Act that the disclosure statement of a co-accused is per se not admissible in evidence. A reference can be made in this regard to the judgment of the Hon'ble Supreme Court in the case of *Tofan Singh V/s. State of Tamil Nadu' (Supra)*.

Once the name of a accused has been nominated on the basis of disclosure statement of a co-accused, then the same being not permissible in evidence per se, the bail can be denied to the accused/petitioner in case

something can be shown as to how the petitioner is connected with the offence apart from a disclosure statement. Therefore, this Court has reasons to believe at least at this stage that the petitioner is not guilty of an offence. So far as the second ingredient for making a departure from the bar contained under Section 37 of the NDPS Act is concerned, the petitioner is stated to be having clean antecedents. It is neither stated in the affidavit filed by the State nor it has been argued by the learned State counsel that in case the petitioner is released on bail, then he may repeat the offence or may abscond from justice. Therefore, this Court is of the considered view that 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.

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.

09.11.2022

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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