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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-27810-2022

Decided on: 12.10.2022

Mandeep Singh

.... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Kulwinder Singh, Advocate
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 439 of Cr.PC seeking for grant of regular bail in case FIR No.44 dated 02.07.2021, under Sections 22/61/85 of the NDPS Act (Section 29 of the NDPS Act added later on), registered at Police Station Budhlada, District Mansa.

It has been submitted by learned counsel for the petitioner that the petitioner is in custody since 06.07.2021 and he was granted interim bail for a short period of time due to non-receipt of the FSL report and in this way his total custody is 7 months and 13 days. He further submitted that it is a case where one Balkar Singh @ Balor Singh was apprehended by the police with the alleged quantity of 25 tablets of *Tramadol* and on his disclosure statement, another co-accused, namely, Harnam Kaur @ Bibi was nominated from whom there was a recovery of 285 grams of *Tramadol* and thereafter, on the disclosure statement of the aforesaid Harnam Kaur @ Bibi the name of the

petitioner was nominated. He also submitted that there is no evidence or nothing on record to show that the petitioner is in any way connected with the present offence except for the disclosure statement made by the co-accused, namely, Harnam Kaur @ Bibi, who herself was nominated on the basis of the disclosure statement of another co-accused and further submitted that disclosure statement of the co-accused is *per se* not admissible in evidence and has also referred to the judgment of the Hon'ble Supreme Court in “**Tofan Singh Vs. State of Tamil Nadu**”, 2021(1) RCR (Criminal) 1. He further submitted that in fact there was a dispute between the petitioner and the aforesaid Harnam Kaur @ Bibi, and thereafter, a compromise has also been effected between the parties and it was only because of that dispute that he has been falsely implicated in the present offence. He also submitted that the aforesaid Harnam Kaur @ Bibi has been extended the benefit of regular bail by this Court in CRM-M-14573-2022 on 19.07.2022. He further submitted that the petitioner is also involved in one more case under the NDPS Act but that would not constitute a ground for denial of the bail to the petitioner particularly in view of the fact that no recovery has been effected from the petitioner.

On the other hand, Mr. Amit Rana, Senior DAG, Punjab, has submitted that it is correct that the petitioner has faced incarceration for about 7 months and 13 days and his name was nominated on the basis of disclosure statement of aforesaid co-accused, namely, Harnam Kaur @ Bibi, who was also nominated on the basis of disclosure statement of the co-accused, namely, Balkar Singh @ Balor Singh. He further submitted that it is also correct that in the present case no recovery has been effected from the present petitioner. He

has however stated that since the total recovery from the other two co-accused falls under the category of commercial quantity under the NDPS Act, therefore, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

I have heard the learned counsel for the parties.

The petitioner has faced incarceration for about 7 months and 13 days. Undoubtedly, his name has been nominated on the basis of the disclosure statement of the co-accused Harnam Kaur @ Bibi, from whom there was a recovery of 285 grams of *Tramadol* and has already been granted regular bail by this Court vide order dated 19.07.2022 in CRM-M-14573-2022. As per the learned State counsel, no recovery has to be effected from the petitioner in the present case. During the course of the arguments, a specific query was raised to the learned State counsel that as to whether there is any sufficient material available with the prosecution to connect the petitioner with the present offence except for the disclosure statement of the co-accused, he after taking specific instructions from ASI Jagmail Singh, who is present in the Court today, stated that as per record there is no such other material available except for the disclosure statement. It is a 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 passed in **Tofan Singh's case** (**supra**). The mere fact that the petitioner is involved in some other case under the NDPS Act cannot itself become a ground for denial of the bail to the petitioner.

In view of the aforesaid peculiar facts and circumstances of the

case, this Court is of the view that there are reasons to believe at least at this stage that the petitioner is not guilty of any offence. Furthermore, it is not the case of the State that in case the petitioner is released on bail then he may abscond or flee from justice or may influence any witness or may repeat the offence, and therefore, both the conditions for making a departure from the bar contained under Section 37 of the NDPS Act remain satisfied. Apart from the same, even as per the learned State counsel, there was no recovery from the present petitioner, and therefore, on this ground as well, bar contained under Section 37 of the NDPS Act will not apply to the petitioner.

Therefore, considering the totality of facts and circumstances in the present case, this Court deems it fit and proper to grant regular bail to the petitioner. Accordingly, the present petition is allowed. The petitioner shall be released on bail subject to the appropriate terms and conditions to the satisfaction of the 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 only for the purpose of decision of present petition.

12.10.2022*Bhumika***(JASGURPREET SINGH PURI)
JUDGE**

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