

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

224

CRM-M-27969-2022

Date of Decision : **August 31, 2022**

JAMSHEED

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Baljeet Beniwal, Advocate
for the petitioner.

Mr. Ranvir Singh Arya, Addl. Advocate General, Haryana.

JASGURPREET SINGH PURI. J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.559 dated 14.12.2021 under Sections 29, 22C, 61, 85 of NDPS Act, 1985, registered at Police Station Adarsh Nagar, District Faridabad.

It has been submitted by the learned counsel for the petitioner that the petitioner is in custody from 6.1.2022 which is almost more than 7 months and the investigation of the case has been completed. He submitted that the name of the petitioner was nominated on the basis of a disclosure statement of the co-accused from whom there was an alleged recovery of 20 injections of Buprenorphine containing 2 mls each. He further submitted that it was more than the commercial quantity but it is a case where the petitioner has clean antecedents and is not involved in any other case and as per Rules 66 of the NDPS Rules, a

person can possess upto 100 doses of injections and with regard to the same he has relied upon the judgment of this Court in **Sukhwinder Singh @ Vicky Vs. State of Punjab, 2021(1) R.C.R.(Criminal) 177**. He further submitted that the disclosure statement of the co-accused is not admissible in evidence as held by the Hon'ble Supreme Court in **Tofan Singh Vs. State of Tamil Nadu, 2021 (1) RCR (Crl.) 1**. He also submitted that in view of the aforesaid position the bar contained under Section 37 of the NDPS Act will not apply in the present case.

On the other hand, the learned State counsel has submitted that it is correct that the petitioner is in custody from 6.1.2022 and after the investigation of the case was completed, the challan has been presented before the competent Court. So far as the applicability of the two judgments i.e. Sukhwinder Singh's case (Supra) @ Vicky as well as Tofan Singh's case (Supra) is concerned, he has not disputed the application of the two aforesaid judgments to the present case. He has also submitted that the petitioner is not involved in any other case of NDPS Act although he is involved in four more cases pertaining to Sections 420 and 323 IPC.

I have heard the learned counsels for the parties.

The petitioner is stated to be in custody from 6.1.2022 and the investigation of the case has been completed. He is not involved in any other case under the NDPS Act. The petitioner was nominated on the basis of the disclosure statement made by the co-accused. The alleged recovery was of 20 injections of Buprenorphine containing 2 mls each although falls in the category of commercial quantity but the case of the

petitioner can be considered in view of the judgment of this Court in Sukhwinder Singh @ Vicky's case (Supra) and also the judgment of the Hon'ble Supreme Court in Tofan Singh's case (Supra). Therefore, while considering the affect of bar contained under Section 37 of NDPS Act, this Court is of the view that in view of the aforesaid position, there are reasons to believe that the petitioner is not guilty of the offence prima facie atleast at this stage. Apart from the same, the petitioner is not involved in any other case under the NDPS Act nor it is the case of the State that in case the petitioner is released on bail then he may repeat the offence. Therefore, both the ingredients contained under Section 37 of NDPS Act for making a departure from the bar contained therein remained satisfied.

In view of the aforesaid position, the present petition is allowed. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

(JASGURPREET SINGH PURI)
JUDGE

August 31, 2022

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