

Sr. No. 209

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

CRM-M No.30869 of 2021

Date of Decision: 11.07.2022

Rajesh @ Mustafa Ansari

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. S.S. Gill, Advocate,
for the petitioner.

Mr. Davinder Bir Singh, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 438 of the Code of Criminal Procedure for the grant of anticipatory bail to the petitioner in FIR No.48 dated 31.03.2021, under Sections 18 & 29 of the NDPS Act, 1985, registered at Police Station Shambhu, District Patiala.

It has been submitted by learned counsel for the petitioner that the petitioner was granted interim bail by this Court on 04.08.2021 and in pursuance of the aforesaid order, the petitioner has already joined the investigation and he has already cooperated with the investigation process. He submitted that the petitioner was falsely implicated in the present case on the basis of a disclosure statement of the co-accused namely Shifali. He submitted that the alleged opium of 3.5 kg. was confiscated from the co-accused Shifali and on her disclosure statement, the name of the petitioner

was nominated. He submitted that Shifali and the petitioner had bad relations with each other and due to that reason, his name has been nominated. He submitted that it is a settled law that a disclosure statement of the co-accused is not admissible in evidence unless it is supported by the other substantial evidence and also referred to judgment of the Supreme Court in *Tofan Singh Vs. State of Tamil Nadu, 2021 (1) RCR (Criminal) 1*. He has submitted that in the present case, there is no substantial material available with the police to connect the petitioner with the alleged recovery. Learned counsel further submitted that the petitioner has got clean antecedents and is not involved in any other case except one case in Uttar Pradesh under Sections 3 & 25 of the Arms Act and it was only because of sour relationship between the petitioner and Shifali that his name has been nominated in the present case. He further submitted that be that as it may, he has already joined the investigation and undertakes to further cooperate with the investigation process.

On the other hand, learned State counsel has submitted that an affidavit has been filed by the State and while referring to the affidavit he also submitted categorically that the petitioner in pursuance of the orders passed by this Court on 04.08.2021 has joined the investigation. He has, however, stated that the prayer of the petitioner for grant of anticipatory bail is barred by the provisions of Section 37 of the NDPS Act since the confiscated quantity from the co-accused is of commercial in nature. He further submitted that there are some telephonic conversations between the petitioner and the other co-accused namely Jaspal Singh.

At this stage, learned counsel for the petitioner has stated that

the main accused namely Shifali and the other co-accused namely Jaspal Singh have already been granted regular bail on the ground that the police official by noticing the presence of contraband even in the case of chance recovery did not comply with the provisions of Section 50 of the NDPS Act even after giving offer.

I have heard learned counsel for the parties.

As per the learned counsel for the State, the petitioner in pursuance of the aforesaid order, has already joined the investigation. However, he has opposed bail on the ground that the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act. It is not disputed that the main accused namely Shifali and the other co-accused namely Jaspal Singh are already on regular bail. The petitioner is not involved in any other case except in one case in Uttar Pradesh under Sections 3 and 25 of the Arms Act. On a specific query being raised during the course of arguments to the learned State counsel as to whether there is any substantial material available with the police to connect the petitioner with the present recovery of 3.5 kg of opium from the co-accused, he submitted that there are some telephonic conversation between the petitioner and the co-accused namely Jaspal Singh. However, the same detail does not find mention in the affidavit filed by the State. It is a settled law that the disclosure statement of a co-accused is per se not admissible in evidence. However, in the present case, nothing has been brought on record to show that as to how the petitioner was connected with the present case apart from the disclosure statement. Nothing has been mentioned in the affidavit with regard to the telephonic conversation between the petitioner

and the co-accused. Therefore, this Court is of the view that at least at this stage, there are reasons to believe that the petitioner is not guilty of offence and therefore, the first ingredient for making departure from Section 37 of the NDPS Act has been fulfilled. So far as the second ingredient is concerned, it is not the case of the State nor it has been argued by the learned State counsel that in case the petitioner is granted bail then he may abscond from justice or repeat the offence. Therefore, the second ingredient for making a departure from Section 37 of the NDPS Act also stands fulfilled.

Apart from the same, as per the learned State counsel, the petitioner has already joined the investigation process and therefore, in view of aforesaid circumstances, the bar contained under Section 37 of the NDPS Act would not apply in the present case at least at this stage.

Therefore, considering the aforesaid facts and circumstances of the case, this Court is of the considered opinion that the petitioner deserves the grant of anticipatory bail. Consequently, the present petition is allowed. Order dated 04.08.2021 is hereby made absolute.

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.

11.07.2022*monika***(JASGURPREET SINGH PURI)
JUDGE***Whether speaking/reasoned Yes/No**Whether reportable Yes/No*