

Sr. No. 217
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M No.29364 of 2022
Date of Decision: 29.09.2022

Hemant Pal

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Ms. Manjot Kaur, Advocate,
for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present is a second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.70 dated 17.06.2021, under Sections 22, 25 and 29 of the NDPS Act, 1985, registered at Police Station Barnala, District Barnala.

It has been submitted by learned counsel for the petitioner that the petitioner is in custody since 05.07.2021, which is almost 01 year and 03 months. She submitted that after the completion of investigation, challan was presented and the charges were framed on 29.03.2022 and till date not even a single witness has been examined, despite the fact that 6 months have passed and there had been 4-5 adjournments, but since it is a case under NDPS Act and the witnesses are the official witness, nobody has stepped into the witness box till date. She submitted that it is a case, where police allegedly apprehended two persons namely Pardeep Kumar and

Amritpal Singh from whom there was a recovery of 50000 tablets of Tradmadol Hydrochloride and thereafter, on their disclosure statement more tablets were found and total recovery was of 1,28,000 tablets from both of them. She submitted that so far as the petitioner is concerned, his name was nominated purely on the basis of disclosure statement of the co-accused by stating that they bought the same from the present petitioner, who is running the chemist shop in Uttra Pradesh. Learned counsel submitted that there is no evidence available with the police or the investigating agency to connect the petitioner with the present offence except the disclosure statement of the co-accused, which is not otherwise permissible in evidence per se and has also referred to the judgment of the Hon'ble Supreme Court in **Tofan Singh versus State of Tamil Nadu** 2021 (1) RCR (Criminal) 1. She submitted that the co-accused namely Banti Kaur alias Ghoga was also nominated purely on the basis of disclosure statement and from her thereafter, there was a recovery of 1830 loose intoxicant tablets and she has been extended the benefit of regular bail by this Court on 17.05.2022 (Annexure P-2).

Learned counsel further submitted that the petitioner has got clean antecedents and he is not involved in any other case and the mere fact that he is running a chemist shop at Gaziabad would not raise any presumption that he has supplied any contraband to the co-accused unless there is sufficient material with the prosecution to connect the petitioner with the present offence. She submitted that apart from the above, no justification has come from the prosecution as to why for the last 06 months after the framing of the charges, no witness has been examined and has also referred to the latest judgment of the Supreme Court in **Satender Kumar**

Antil Vs. Central Bureau of Investigation & another, 2022 SCC Online SC 825.

On the other hand, learned State counsel has submitted that it is correct that the petitioner is in custody since 05.07.2021, which is about 01 year and 03 months and the charges were framed on 29.03.2022 but till date no witnesses have been examined although 4-5 adjournments were taken by the official witnesses in this regard. However, he has opposed the grant of regular bail by submitting that when the co-accused were interrogated they disclosed the name of the present petitioner by stating that some tablets were taken from him. He submitted that since the quantity confiscated from the co-accused falls in the category commercial quantity, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act. So far as the grant of bail to the other accused namely Banti Kaur is concerned, he has stated that it is correct that this Court has extended the benefit of bail to the aforesaid Banti Kaur, who is a lady on the ground that she was nominated on the basis of disclosure statement of co-accused.

I have heard learned counsels for the parties.

In the present case the petitioner has faced incarceration for 01 year and 03 months. It is not in dispute that the petitioner is not involved in any other case. Charges were framed on 29.03.2022, but as per the learned counsel for the parties despite four to five adjournments, no witness has been examined. The name of the petitioner has been nominated purely on the basis of disclosure statement of the co-accused.

During the course of the arguments, two queries were raised to the learned State counsel, firstly, as to what was the justification as to why

for 6 months after the framing of the charge that no official witness has been examined particularly considering the fact that it is a case under the NDPS Act and the prosecution witnesses are official witnesses, who had themselves set the criminal law into motion. Learned State counsel could not justify the above. Secondly, as to whether apart from the disclosure statement of the co-accused, there is any other sufficient material available with the investigating agency to connect the petitioner with the present offence or not, he stated that an affidavit has been filed by the DSP and he has also sought instructions from ASI Avtar Singh, who is present in the Court and stated that there was no other material available with the investigating agency apart from the disclosure statement of co-accused. .

In view of the Supreme Court judgment in *Tofan Singh's case*, a disclosure statement of co-accused is not admissible in evidence per se unless some other corroborated facts or sufficient material is available to connect the petitioner with the offence. Even in the present case as per the learned State counsel and as per the affidavit, there is nothing to show nor it is so stated by learned State counsel that there is any sufficient material available with the investigating agency to connect the petitioner with the offence except the disclosure statement of the co-accused.

Apart from the above, the trial has also been delayed by the prosecution itself and no justification has come forward from the State as to why for the last five to six months after framing of the charges not even a single witness has been examined and the consequence was that the petitioner has faced incarceration for 1 year and 03 months and he is nominated purely on the basis of disclosure statement of co-accused

coupled with the fact that the petitioner is stated to be having clean antecedents and not involved in any other case.

Therefore, considering the bar contained in Section 37 of the NDPS Act, the facts and circumstances of the present case suggest that there are *prima facie* reasons to believe at this stage at least that the petitioner is not guilty of the offence. Apart from the same, it is not the case of the State counsel that in case the petitioner is released on bail, then he may repeat the offence or may abscond from justice. Therefore, both the conditions for making a departure from the bar contained in Section 37 of the NDPS Act remain satisfied.

In view of the aforesaid position, 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.

29.09.2022
monika

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable Yes/No