

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

212

CRM-M-37068-2021

Date of Decision : **March 11, 2022**

TARANJOT SINGH @ TANNA

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Through Video Conferencing

Present : Mr. A.P.S.Rehan, Advocate
for the petitioner.

Mr. Randhir Singh Thind, DAG, Punjab.

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. 38 dated 4.7.2021 under Sections 22 and 29 of NDPS Act registered at Police Station Fatehgarh Pantoor, District Moga.

The learned counsel for the petitioner had submitted that the petitioner was in custody since the year 2015 in some other cases and thereafter he was neither released on bail nor on parole or any other mode and he was constantly in custody from the year 2015 and now the present FIR has been registered in the year 2021 when the co-accused was arrested, the name of the petitioner was nominated on the basis of the disclosure statement of the co-accused on the ground that the petitioner has supplied the contraband to the co-accused.

This Court had directed the State to file an affidavit with

regard to the aforesaid contention raised by the learned counsel for the petitioner.

An affidavit dated 3.3.2022 has been filed by the DSP, Dharamkot, District Moga.

The learned counsel for the petitioner while referring to the affidavit filed by the State has submitted that the specific query raised by the Court has not been answered in the affidavit and rather it has been stated in para No.14 only to the extent that the petitioner was confined in jail in connection with other cases and in the present case the petitioner was formally arrested on 8.7.2021 on the basis of production warrants. He submitted that although the petitioner is involved in a number of other cases but he is already on bail in all the cases except in one case and it was only because the petitioner was involved in other cases that his name has been nominated on the basis of a disclosure statement of co-accused which is not permissible in evidence. He further referred to para No.12 of the affidavit filed by the State in which it was stated that the co-accused, namely, Aman Sharma disclosed the name of the petitioner on 6.7.2021 that he purchased the recovered 5500 intoxicant tablets from the petitioner and on the basis of the disclosure statement, the petitioner was nominated as an accused and offence under Section 29 of NDPS Act was added. He submitted that as per the affidavit it is clear that the petitioner, who was in custody in other cases for the last six years has been falsely implicated in the present case.

On the other hand, the learned State counsel has submitted that there was a recovery of 5500 tablets of tramadol from the co-accused

and, therefore, the present case is hit by the bar contained under Section 37 of NDPS Act. He further submitted that the petitioner is a habitual offender and, therefore, is not entitled for the grant of regular bail.

I have heard the learned counsels for the parties.

On a specific direction issued by this Court on the earlier date, an affidavit has been filed by the State but the affidavit appears to be totally vague on the point which was raised by the learned counsel for the petitioner that the petitioner was in custody for the last 6 years and he was never released on bail or on parole or any other mode and now in the year 2021 his name has been nominated on the basis of a disclosure statement. The only thing which is mentioned in para No.14 of the affidavit filed by the State that he was confined in jail in connection with other cases and, therefore, the contents of the affidavit are totally vague. A perusal of para No.13 of the affidavit would show that it has been stated that apart from the disclosure statement of co-accused Aman Sharma, there is no direct evidence against the petitioner. The pendency of the other cases against the petitioner is a ground for consideration as to whether bail should be granted or not but that cannot become ground *ipso-facto* for denial of bail when the facts suggests otherwise. In the affidavit, the State itself has stated that apart from the disclosure statement, there is no direct evidence available against the petitioner to connect him with the offence and, therefore, in view of the law laid down by the Hon'ble Supreme Court in **Tofan Singh Vs. State of Tamil Nadu, 2021 (1) RCR (Crl) 1**, the only disclosure statement against the petitioner would not permissible in evidence unless it is supported by

sufficient evidence to connect the petitioner. Neither the learned State counsel nor the affidavit could justify as to how the petitioner was nominated on the basis of a disclosure statement of co-accused for supplying the intoxicant tablets in the year 2021 when he was in custody from the year 2015 i.e. 6 years. Therefore, considering for the bar contained under Section 37 of NDPS Act at this stage, this Court is of the prima facie view that there are reasons to believe that the petitioner is not guilty of the offence atleast at this stage. Furthermore there is nothing on record from the argument raised by the learned State counsel or from the affidavit to suggest that in case the petitioner is released on bail then he may repeat the offence. Therefore, at this stage a departure can be made from the bar contained under Section 37 of NDPS Act.

Therefore, considering the totality of facts and circumstances of the present case, this Court deems it fit and proper to grant regular bail to the petitioner.

Consequently, the present petition is allowed. The petitioner is ordered to be released on bail, if not required in any other case, 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

March 11, 2022
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No