

CRM-M-39214-2021 (O&M)

Through video conference
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CRM-M-39214-2021 (O&M).
Decided on: March 8, 2022.

Kulwinder Singh

.. Petitioner

VERSUS

State of Punjab

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

PRESENT Mr.Tanvir Singh Grewal, Advocate,
for the petitioner.

Mr.C.L.Pawar, Sr. DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 438 of the Code of Criminal Procedure, for grant of anticipatory bail in FIR No.133 dated 24.8.2021, under Sections 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, (Section 29 of the NDPS Act, added later on), registered at Police Station City Sangrur, District Sangrur, Punjab.

Learned counsel for the petitioner has submitted that

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after notice of motion was issued by this Court on 21.9.2021 and interim bail was granted, the petitioner has joined the investigation and has fully cooperated with the investigation process. He submitted that it is a case where the name of the petitioner was nominated on the basis of disclosure statement of the co-accused namely Karamjit Singh who was apprehended at the spot with 1300 tablets out of which 1000 tablets were stated to be of Clavido1. He submitted that when the notice of motion was issued, the effect of Section 37 of the NDPS Act, was considered and thereafter, the petitioner was granted interim bail on the ground that apart from the disclosure statement, there was no other sufficient material available with the police to connect the petitioner with the present offence. He submitted that now an affidavit has been filed by the State in which it has been stated by the police that the petitioner has joined the investigation and further in para 6 of the affidavit, it has been specifically stated that there is no other FIR against the petitioner. He submitted that the only reason to link the petitioner with the present case as stated in the affidavit is that the petitioner had exchanged two phone calls with the other co-accused. He submitted that two calls between two acquaintances cannot be termed as sufficient material to link the petitioner with the present offence unless there is other sufficient material available with the police. Disclosure statement of co-accused is not admissible in view of the law laid down by Hon'ble the Supreme Court in *Tofan Singh Vs. State of Tamil Nadu, 2021 (1) RCR (Crl.) 1.* He submitted that interim bail granted to the petitioner may be confirmed.

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On the other hand, learned State counsel, while referring to the affidavit filed by the State has submitted that it is correct that the petitioner is not involved in any other case and his name was nominated on the basis of disclosure statement of the co-accused. He submitted that so far as the existence of any other sufficient material available with the police to connect the petitioner with the present offence apart from the disclosure statement is concerned, it has been stated in the affidavit that there were two phone calls exchanged with the other co-accused on the day on which FIR was registered.

I have heard the learned counsel for the parties.

In pursuance of order dated 21.9.2021, the petitioner has joined investigation and has fully cooperated with the investigation process. However, the learned State counsel has opposed the grant of anticipatory bail to the petitioner on the ground that two phone calls were exchanged with the other co-accused apart from the disclosure statement and therefore, that would be a sufficient reason to connect the petitioner with the present offence. The aforesaid reason given by the State in the affidavit would not be sufficient. The disclosure statement per se is not admissible in evidence unless it is corroborated by any other sufficient material. The bar contained under Section 37 of the NDPS Act, in the present case would not apply at least at this stage, in view of the fact that there are reasons to believe at this stage that petitioner is not guilty of the offence particularly when his name has been nominated purely on the basis of disclosure statement without

existence of any other sufficient material. So far as the second ingredient of Section 37 of the NDPS Act, is concerned, as per the affidavit filed by the State, the petitioner has clean antecedents and he is not involved in any other case and there is no apprehension expressed by the State that in case the petitioner is released on bail then he may influence any witness or may tamper with any evidence or may flee from justice. Therefore, at least, at this stage, a departure can be made from the bar contained under Section 37 of the NDPS Act.

Therefore, considering the aforesaid facts and circumstances of the present case, this Court deems it fit and proper to grant the concession of anticipatory bail to the petitioner. Consequently, the present petition is allowed. Interim order date 21.9.2021, 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 only for the purpose of decision of present petition.

March 8, 2022	(JASGURPREET SINGH PURI)
raj arora	JUDGE
Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No