

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

237

CRM-M-38466 of 2022
Date of Decision:29.11.2022

Harjinder Singh @ Laddi

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Anmol Partap Singh Mann, Advocate
for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.59 dated 13.07.2022, under Sections 15, 21, 29 of the NDPS Act, registered at Police Station Behram, Shaheed Bhagat Singh Nagar.

It has been submitted by the learned counsel for the petitioner that the petitioner is in custody from 13.07.2022 and the investigation of the case has been completed and thereafter challan was presented before the competent Court. He submitted that the petitioner is not a habitual offender and he is not involved in any other case and it is a case where the petitioner is having a taxi which is duly registered with the registering authority. He submitted that the taxi was hired by two women who were sitting on the back seat and there was nobody sitting on the

conductor seat. On the basis of a naka laid down by the police, the taxi which is owned and driven by the petitioner was stopped by the police and thereafter there had been alleged recovery of 600 grams of heroin from one lady and 400 grams from the purse of the other lady and 3 kgs. of poppy husk from underneath the seat of the taxi. He submitted that the police got recorded disclosure statements of other two co-accused but the statements of the other two co-accused are not admissible in evidence *per se* and there is no other material available with the police to connect the present petitioner with the recovery of the contraband from the passengers who had hired his taxi. He has further submitted that the other two co-accused who are the ladies from whom there was an alleged recovery are rather habitual offenders and they are involved in 4-5 more cases under the NDPS Act and so far as the present petitioner is concerned, no offence can be attributed to him only because of the reason that he was the owner and driver of the taxi and was driving the taxi at that relevant time in the absence of any sufficient material available with the police. He further referred to the report under Section 173 of the Code of Criminal Procedure which was submitted after thorough investigation and from a persual of the aforesaid report, there was no material available with the police nor any such thing has been disclosed even in the challan. He has further referred to a judgment of the Hon'ble Supreme Court in Abdul Rashid Ibrahim Mansuri vs. State of Gujarat 2000 SCC (CrL.) 496 and a division Bench judgment of this Court in Bal Krishan and others vs. State of Punjab CRA-433-DB-2004, to contend that in such like situation in the absence of any other cogent and sufficient material to connect the petitioner as a driver of a vehicle which is driven as a taxi cannot be implicated in an offence when there was no recovery

from the conscious possession of the driver of the taxi.

On the other hand, Mr. Kunal Vinayak, learned AAG, Punjab has stated that it is correct that the petitioner is in custody from 13.07.2022 and the investigation of the case has been completed and the challan has been presented to the competent Court. He further submitted that it is also correct that the petitioner is not involved in any other case.

On a further query being raised to the learned State counsel as to whether during the investigation anything was found against the present petitioner connecting him with the recovery from the other two co-accused who were the ladies sitting on the back seat, he submitted that except for the disclosure statement of the aforesaid two co-accused there was no material available nor anything has been mentioned in the challan which was presented to the Court.

I have heard the learned counsel for the parties.

It is a case where there is no dispute that the petitioner was the owner and driver of a car which was being driven as a taxi and is duly registered before the registering authority. During the course of arguments, learned counsel for the petitioner has also drawn attention of this Court to Annexure P-2 to show the number of the car which has been mentioned in the FIR has been registered with the registering authority as well as a commercial taxi. On a specific query being raised to the learned State counsel as to whether there was any other material available either during the course of investigation or at the time of the presentation of challan, he was not able to answer the same except for stating that there is only a disclosure statement of the co-accused against the present petitioner and that was the only reason as to why he has been nominated as an accused in the present case.

Learned State counsel also stated, on instructions from ASI Surinder Pal, that the petitioner is not a habitual offender and is not involved in any other case. Since the recovery of heroin from the two ladies who were sitting on the back seat of the car falls under the category of commercial quantity under the NDPS Act, this Court would therefore consider the effect of Section 37 of the NDPS Act. Allegedly, there was no recovery from the conscious possession of the present petitioner and it is also not in dispute that the petitioner is the owner-cum-driver of the taxi which was registered with the registering authority. Apart from the disclosure statement of the co-accused, no material was available even at the time of the presentation of the challan for connecting the present petitioner with the present offence. The judgment referred to by the learned counsel for the petitioner in ***Abdul Rashid Ibrahim Mansuri*** and ***Bal Krishan's*** cases (supra) would be applicable in the present case as well. 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 least at this stage 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 under 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 only meant for the purpose of

decision of present petition.

(JASGURPREET SINGH PURI)
JUDGE

November 29, 2022
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No