

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

224

CRM-M-41165 of 2022
Date of Decision:14.09.2022

Mukesh

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Dr. Deipa Singh, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana

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.0111 dated 04.03.2022, under Sections 20 of the NDPS Act, (Section 27 and 29 added later), registered at Police Station City Industrial Area Sector 29, Panipat, District Panipat.

It has been submitted by the learned counsel for the petitioner that the petitioner is in custody from 07.03.2022 and the investigation of the case has been completed and thereafter challan was presented before the competent court. She submitted that the name of the petitioner was nominated on the basis of disclosure statements of the co-accused namely Krishan and Sonu who were caught on the

spot. She submitted that in the first disclosure statement the aforesaid persons who were apprehended on the spot had disclosed the name of one Manoj Tyagi and thereafter on second disclosure statement they disclosed the name of the present petitioner alongwith two more persons. The learned counsel for the petitioner has submitted that the disclosure statement of the co-accused is not admissible in evidence *per se* and has also referred to a judgment of the Supreme Court in **Tofan Singh versus State of Tamil Nadu 2021 (1) RCR (Criminal) 1**. She further submitted that although the confiscated quantity from the co-accused who were apprehended on the spot was commercial quantity, but the bar contained Section 37 of the NDPS Act, 1985 will not apply in the present case in view of the fact that there is no sufficient material with the prosecution to connect the petitioner with the present offence except for the disclosure statements of the co-accused. She submitted that the petitioner has clean antecedents and he is not involved in any other case and the mere fact that his name was nominated on the basis of the disclosure statement of the co-accused, no presumption would arise that he is connected with the offence unless there is sufficient material in this regard. She further submitted that the petitioner has already faced incarceration for about six months and in view of the aforesaid position, he may be considered for the grant of regular bail.

On the other hand, Mr. Naveen Singh Panwar, learned DAG, Haryana has stated that it is correct that the petitioner is in custody from 07.03.2022 and the investigation of the case has been completed. He further submitted that it is also correct that the name of the petitioner was nominated on the basis of a disclosure statement of a co-accused. He submitted that there was a recovery of Rs.5000/- and

a car effected from the petitioner.

However, on a query being raised to the learned counsel for the State as to whether the aforesaid Scorpio car was used in the offence or not, he submitted that at the time of apprehending the two co-accused namely Sonu and Krishan, the said car was not seized but as per the disclosure statement, the said car was used for bringing the contraband from Himachal Pradesh. He further submitted that apart from the aforesaid disclosure statement, there was nothing on record to show that the petitioner is connected with the present offence except for the two factors i.e. Rs.5000/- and one Scorpio car. He also submitted that it is correct that the petitioner is not involved in any other case.

I have heard the learned counsel for the parties.

The petitioner is stated to be in custody from 07.03.2022 and the investigation of the case has been completed. As per the arguments raised by learned counsel for the parties, the name of the petitioner was nominated on the basis of a disclosure statement of a co-accused but nothing has come on record to show as to how the petitioner was connected with the present offence apart from the disclosure statement of a co-accused which is otherwise also not admissible in evidence especially in view of the Supreme Court judgment in ***Tofan Singh's case*** (supra). The petitioner is stated to be 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 only meant for the purpose of decision of present petition.

(JASGURPREET SINGH PURI)
JUDGE

September 14, 2022
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No