

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

**CRM-M-42051 of 2022 (O&M)
Date of decision : 27.10.2022**

Gurpinder Singh @ Shikari

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. G.S.Saini, Advocate
for the applicant-petitioner.

Mr. Arun Gupta, AAG, Punjab.

PANKAJ JAIN, J. (ORAL)

CRM-37248-2022

For the reasons recorded, the application is allowed. Annexure
P-3 is taken on record.

CRM-39928-2022

Pursuant to the order dated 19.09.2022, petitioner has placed
on record supplementary challan marked as Annexure P-4.

For the reasons recorded, the application is allowed. Copy of
the supplementary challan, Annexure P-4 is taken on record.

CRM-M-42051-2022

This petition has been filed under Section 439 Cr.P.C. for
grant of regular bail to the petitioner in case F.I.R. No.0025 dated
19.03.2022 registered under Sections 22 & 29 of NDPS Act, (charge has
been framed under Section 22 (C), 29 of NDPS Act vide order dated
03.09.2022 passed by learned Court of Judge, Special Court, Moga), at
Police Station Sadar Moga, District Moga, Punjab.

Custody certificate dated 25.10.2022 by way of an affidavit of Rajiv Kumar Arora, Superintendent of Central Jail Faridkot has been filed. The same is taken on record.

Counsel for the petitioner has taken this Court to the contents of the supplementary challan wherein the role of the petitioner un-earthed during the investigation has been reported as under :-

“Then ASI Malkit Singh No. 726/Moga named Gurbinder Singh @ Shikari son of Jagdev Singh resident of Thethar Kalan, District Ferozepur as accused in case on the basis of questioning of accused Sukhbir Singh @ Sukha and added sections 29/61/85 NDPS Act. Insp. Sukhdev Singh had sent sample parcel of case to FSL Ludhiana for analysis and its chemical report is received. Challan of accused in case Sukhbir Singh @ Sukha was prepared on dt. 23.05.2022 and was presented in court on dt. 21.06.2022, which is pending. On dt. 30.07.2022 ASI Santokh Singh No. 271/Moga alongwith ASI Varinder Kumar No. 676/Moga, SC Harjinder Singh No. 1121/Moga, S/Ct. Jora Singh No. 1102/Moga by riding private vehicle had gone to investigate in case and ASI Santokh Singh alongwith co-employees raided the house of accused Gurbinder Singh @ Gaggu @Shikari and one young person having trimmed skull hair was seen standing inside the gate of house and on seeing police party he tried to ran outside. ASI Santokh Singh with help of co-employees apprehended him and asked his about his name and address and he disclosed his name as Gurbinder Singh @ Gaggu @ Shikari son of Jagdev Singh son of Gurmukh Singh resident of Thethar Kalan, PS Ghall Khurd, District Ferozepur. ASI Santokh Singh apprised him about the facts of case, joined him with investigation and questioned him. During questioning, accused Gurbinder Singh @ Gaggu @ Shikari gave disclosure statement that, "Sukhbir Singh @

Sukha son of Kulwant Singh son of Tej Singh resident of Mangewala, PS Sadar Moga, District Moga was doing work of veterinary and he used to visit our village and he was also visited in my house and we became friends. On dated 19.03.2022 Sukhbir Singh had taken 4 boxes of intoxicating tablets of Chelcidol-100SR from me and you had apprehended and above mentioned FIR was registered against us. Till date I was evading arrest and today you have apprehended me."

Disclosure statement of accused Gurbinder Singh @ Gaggu @ Shikari was written u/s 27 Evidence Act, on which accused Gurbinder Singh @ Gaggu @ Shikari gave his signature and ASI Varinder Kumar No. 676/Moga and S/Ct. Harjinder Singh No. 1121/Moga gave their signatures as witnesses. Then ASI Santokh Singh arrested accused Gurbinder Singh @ Gaggu @ Shikari after questioning and prepared his arrest memo. On memo, accused Gurbinder Singh @ Gaggu @ Shikari gave his signature and ASI Varinder Kumar No. 676/Moga and S/Ct. Harjinder Singh No. 1121/Moga gave their signatures as witnesses. Then personal search of accused Gurbinder Singh @ Gaggu @ Shikari was conducted and any cash, mobile phone, jewelry etc. was not recovered from him. His personal search memo was prepared. On memo, accused Gurbinder Singh @ Gaggu @ Shikari gave his signature and ASI Varinder Kumar No. 676/Moga and S/Ct. Harjinder Singh No. 1121/Moga gave their signatures as witnesses."

Learned counsel for the petitioner submits that merely on the basis of a disclosure statement suffered by co-accused, petitioner has been nominated and no recovery has been effected from him. Learned counsel submits that challan already stands presented, charges have been framed. There is no further investigation pending in the present case.

The petitioner has already suffered incarceration of more than 2 months

and 27 days and there is no other case pending against him for offence punishable under provisions of NDPS Act. Thus the petitioner is entitled for concession of regular bail. Learned counsel for the petitioner has argued that apart from the disclosure statement suffered by co-accused Sukhbir Singh @ Sukha there is nothing on record that yokes the petitioner to the present case. In these circumstances, even as per the dictum of law laid down in *State of Haryana Vs. Samarth Kumar (2022) 3 RCR Cri.991*, the petitioner is entitled to the benefit of law laid down in *Tofan Singh Vs.State of Tamil Nadu, 2021 (4) SCC 1*.

Learned State counsel is not in a position to dispute the aforesaid factual assertions made by counsel for the petitioner on the basis of record.

I have heard learned counsel for the parties and have gone through the records of the case.

Admittedly, challan stands presented and charges have been framed. There is no apprehension that the petitioner can tamper with the evidence.

Without commenting on the merits of the case and keeping in view the incarceration already suffered by the petitioner and the dictum of law laid down in *Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1*, the present petition is allowed.

The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :-

- (i) *The petitioner shall not mis-use the liberty granted.*
- (ii) *The petitioner shall not tamper with any evidence oral or documentary during the trial.*
- (iii) *The petitioner shall not absent himself on any date before the trial.*
- (iv) *The petitioner shall not commit any offence similar to the one alleged in the present case.*
- (v) *The petitioner shall deposit his passport, if any with the trial Court.*
- (vi) *The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.*
- (vii) *The petitioner shall not in any manner try to delay the trial.*

Needless to say anything recorded herein shall not be construed as an expression of opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

27.10.2022
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No