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

CRM-M-44242-2022

Date of decision : 10.11.2022

Nitya Nand @ Nityanand Sharma

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. P.S. Sekhon, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of regular bail to the petitioner in FIR No.338 dated 01.08.2022 registered under Sections 22-C and 29 of NDPS Act, 1985 at Police Station Sadar Yamuna Nagar, District Yamuna Nagar.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 05.08.2022 and investigation is complete and challan has been presented and there are 15 prosecution witnesses, out of which, none have been examined as yet and thus, the conclusion of the trial is likely to take time. It is further submitted that in the present case, no recovery has been effected from the present petitioner and the alleged recovery has been effected from the co-accused Kuldeep Singh and the

present petitioner has been implicated solely on the basis of disclosure statement of the said Kuldeep Singh and there is no other material, much less tangible material, implicating the present petitioner with respect to the alleged crime. It is contended that there are no call details between the petitioner and co-accused Kuldeep Singh and the said Kuldeep Singh has falsely implicated the present petitioner on account of enmity. He has relied upon the judgment passed by the Hon'ble Supreme Court in **Tofan Singh Vs. State of Tamil Nadu**, reported as **2021(1) RCR (Criminal) 1**, in support of his arguments.

On the other hand, learned State counsel has opposed the present petition for grant of regular bail to the petitioner and has submitted that recovery from the co-accused Kuldeep Singh is of commercial quantity and thus, provisions of Section 37 of NDPS Act, 1985 would apply. It is further submitted that the petitioner has been implicated on the basis of disclosure statement of the said Kuldeep Singh and one phone has been recovered from the present petitioner. It is contended that the petitioner is involved in another case under the NDPS Act. It is, however, not disputed that there are no call details between the petitioner and accused, nor it has been stated that there is any incriminating evidence other than the disclosure statement of co-accused implicating the present petitioner.

Learned counsel for the petitioner, in rebuttal to the said argument has submitted that the petitioner is on bail in abovesaid case and even in the said case, he was implicated on the basis of disclosure statement of the co-accused Kuldeep Singh and has relied upon the judgment of Hon'ble Supreme Court in **“Maulana Mohd. Amir Rashadi vs. State of U.P. and another”**, reported as **2012 (2) SCC 382** to contend that the facts

and circumstances of the present case are to be seen and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in another case. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

This Court has heard learned counsel for the parties and has perused the paper book.

The Hon'ble Supreme Court in ***Tofan Singh's case*** (Supra), had observed as under:-

“152. Thus, to arrive at the conclusion that a confessional statement made before an officer designated under [section 42](#) or [section 53](#) can be the basis to convict a person under the [NDPS Act](#), without any non obstante clause doing away with [section 25](#) of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India.”

In the present case, the petitioner is in custody since 05.08.2022 and investigation is complete and challan has been presented and out of 15 prosecution witnesses, none have been examined as yet and thus, the conclusion of the trial is likely to take time. No recovery has been effected from the present petitioner and the alleged recovery has been effected from

the co-accused Kuldeep Singh son of Fakir Chand. The petitioner is sought to be implicated solely on the basis of disclosure statement of the said Kuldeep Singh. No other tangible material has been pointed out against the present petitioner. Since, the petitioner has been implicated on the basis of disclosure statement of co-accused Kuldeep Singh alone, thus, there is reasonable chance that the petitioner may be acquitted in the trial. However, no final observation is being made and the said aspect would be considered during the course of trial.

Keeping in view the abovesaid facts and circumstances and also in view of law laid down in abovesaid judgments, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to him not being required in any other case. The petitioner shall also abide by the following conditions:-

1. The petitioner will not tamper with the evidence during the trial.
2. The petitioner will not pressurize/intimidate the prosecution witness(s).
3. The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
4. The petitioner shall not commit an offence similar to the offence of which he is accused, or for commission of which he is suspected.
5. The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer or tamper with the evidence.

In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

10.11.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No