

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

CRM-M-46844-2022

Date of decision : 17.10.2022

Sukhdeep Singh @ Gaggu @ Billa

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Kuldip Singh, Advocate
for the petitioner.

Mr. Arun Gupta, AAG, Punjab.

PANKAJ JAIN, J. (Oral)

Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.48 dated 06.06.2022, registered for the offence punishable under Sections 22 and 29 (Notification No.61) of NDPS Act, 1985 at Police Station Ghall Khurd, District Ferozepur.

2. Custody certificate has been placed on record. As per the same, the petitioner has undergone actual custody of 02 months and 29 days. It is also discernible from the custody certificate that there is another FIR bearing No.67 dated 17.07.2022, wherein the petitioner has been nominated again on the basis of disclosure statement. The FIR is registered at the same police station.

3. Counsel for the petitioner submits that the petitioner in the present case has been nominated merely on the basis of disclosure statement suffered by co-accused. From three other co-accused, contraband was recovered. However, so far as the accused in the present

petition is concerned, there is no recovery effected from him and thus qua him provision contained under Section 37 of NDPS Act will not be attracted. Counsel further points out that false implication of the petitioner also cannot be ruled out as he has been nominated in another FIR lodged subsequent to the present case in the same police station again by resorting to Section 29 of the NDPS Act. It has been further contended that since it is a case of regular bail, the petitioner is entitled for the benefit of dictum of law laid down in '*Tofan Singh vs. State of Tamil Nadu*' reported as *(2021) 4 SCC 1*.

4. Mr. Gupta on advance notice appears on behalf of the State. In earlier call during the course of the day, he sought time to ascertain the fact w.r.t. to the recovery from the petitioner. Mr. Gupta very fairly submits that the factual assertions made by counsel for the petitioner w.r.t their being no recovery effected from the petitioner is factually correct. However, he points out to another case registered against the petitioner. Though he does not dispute that in the said case also, the petitioner has been nominated merely on the basis of disclosure statement suffered by co-accused.

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

6. Admittedly in the present case, there is no recovery alleged to have been effected against the petitioner and thus qua petitioner rigorous of Section 37 of NDPS Act will not be attracted. Moreover, the petitioner has been nominated merely on the basis of disclosure statement

made by co-accused and thus serious question w.r.t. the admissibility thereof will be involved in the present petition in terms of law laid down in Tofan Singh's case (supra).

7. Keeping in view the incarceration already suffered by the petitioner and without commenting on the merits of the case, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.

8. Needless to say nothing recorded herein shall be construed to be an expression of an opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

17.10.2022
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No