

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-47140 of 2022
Date of Decision:15.11.2022

Harinder Singh

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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

Mr. Kunal Vinayak, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

The second 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.164 dated 25.08.2021, under Sections 21/21-C, 23, 25, 27-A, 29-61-85 of the NDPS Act and Sections 473, 411, 120-B, 34 IPC, registered at Police Station Kathunangal, District Amritsar.

It has been submitted by the learned counsel for the petitioner that the petitioner is in custody from 28.08.2021 which is more than one year and the investigation of the case has been completed and thereafter challan has been presented before the competent court but the charges in the present case have not been framed. Learned counsel for the petitioner has submitted that the petitioner is not a habitual offender and is not involved in any other case and has been falsely

implicated in the present case.

Learned counsel for the petitioner has submitted as per the allegations detailed in the FIR that the another co-accused namely Ranjit Singh @ Rana was caught who was in an Innova car and there was a confiscation of 16 kg. 820 grams of heroin from him. He submitted that so far as the allegations against the present petitioner are concerned, he was named on the basis of a disclosure statement made by the other co-accused namely Ranjit Singh @ Sonu only with regard to the fact that a secret box was made in the Innova car by the present petitioner, but in the disclosure statement there was nothing with regard to the contraband or heroin. He submitted that even as per the disclosure statement itself there was no disclosure with regard to the connection of the petitioner with heroin or any other contraband but the sole allegation against the petitioner was that he had constructed some secret box. Learned counsel submitted that the petitioner is a Truck Bodybuilder and he is in the profession of making truck bodies and it was only because of this reason he has been falsely implicated in the present case. He submitted that there are number of truck bodybuilders in the city but the petitioner has been implicated on the basis of disclosure statement of a co-accused which is not admissible in evidence *per se*. He relied upon a judgment of the Supreme Court in **Tofan Singh versus State of Tamil Nadu 2021 (1) RCR (Criminal) 1** and contended that a disclosure statement of a co-accused is not admissible in evidence *per se* and further submitted that except for the disclosure statement there was no evidence available with the State to connect the petitioner with the present offence and therefore considering the aforesaid totality and circumstances, he may be considered for the grant of regular bail.

He has also submitted that since there was no allegation against the petitioner with regard to the alleged contraband, the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner.

On the other hand, Mr. Kunal Vinayak, learned AAG, Punjab has stated, on instructions from ASI Nirmal Singh, that it is correct that the petitioner is in custody from 28.08.2021, which is almost one year and two months and the investigation of the case has been completed.

On a specific query being asked to the learned State counsel, as to whether there is any other evidence available with the prosecution for connecting the petitioner with the present offence apart from the disclosure statement of the co-accused, he submitted that no evidence has been collected or is available with the State against the petitioner except the disclosure statement of the co-accused. On another query being raised to the learned State counsel, as to whether the disclosure statement pertained to any contraband or it pertained only to the manufacturing of a secret box in a car, he has stated, on instructions, that the disclosure statement did not pertain to any contraband but it pertained only to the manufacturing of a secret box in a car.

I have heard the learned counsel for the parties.

The petitioner is stated to be in custody from the last one year and two months and even as per the stand taken by the learned State counsel, name of the petitioner was nominated on the basis of the disclosure statement of a co-accused and there is no evidence available with the State to connect the petitioner with the alleged contraband which was confiscated from the co-accused of the petitioner. Apart from the above, the petitioner is not stated to be involved in any other case

and is not a habitual offender and is stated to be a truck bodybuilder in the city.

Therefore, in view of the aforesaid facts and circumstances, this Court is of the view that the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner because there was no allegation with regard to the contraband pertaining to the petitioner even as per the prosecution story. Therefore, this Court at this stage is *prima facie* satisfied and has reasons to believe that the petitioner is not guilty of the offence at least at this stage. So far as the second ingredient for making a departure from the bar contained under Section 37 of the NDPS Act is concerned, the petitioner is stated to be not involved in any other case and it is not the case of the State nor it has been argued by the learned 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 ingredients contained under Section 37 of the NDPS Act for making a departure from the bar 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 15, 2022

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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No