

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

CRM-M-53635-2021

Date of decision : 16.11.2022

Hardev Singh @ Dev

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Arshdeep S. Brar, Advocate
for the petitioner.

Mr. Arun Gupta, Asstt. Advocate General, Punjab
for the respondent-State.

PANKAJ JAIN, J. (ORAL)

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.173 dated 20th of July, 2019 registered for the offences punishable under Section 21 (Section 29 added later on) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') at Police Station City Moga, District Moga.

2. As per the allegations levelled, the recovery of 255 grams of *heroin* and Rs.2.5 lakh was made from Varinder @ Nannu and Dharamvir Singh @ Dharamdeep Singh @ Nikka, who in their disclosure statement named Vijay Singh and Hardev Singh-the present petitioner to be the source. As per the prosecution, a vehicle was stopped after secret information was received. From the said vehicle Varinder @ Nannu and Dharamvir Singh @ Dharamdeep Singh @ Nikka were arrested at the spot

after recovery of 255 grams of *heroin* was effected from Varinder @ Nannu.

3. Ld. Counsel for the petitioner submits that in view of ratio of law laid down by Apex Court in **Tofan Singh vs. State of Tamil Nadu (2021) 4 SCC 1**, such disclosure suffered by co-accused cannot be read against the petitioner who is in custody since 29th of August, 2021. Co-accused namely Vijay Singh, who is similarly situated and Varinder Singh @ Nannu from whom recovery was effected stand admitted to bail vide order dated 22nd of July, 2020 in CRM-M No.16341 of 2020 and that in CRM-M No.13600 of 2020 dated 17th of June, 2020, respectively.

4. Ld. State Counsel has opposed the prayer made by the petitioner asserting that the petitioner is a habitual offender and is involved in other FIRs as well facing similar allegations under the NDPS Act.

5. Faced with this situation, Counsel for the petitioner submits that in majority of the cases, the petitioner has been nominated on the basis of disclosure statement with the aid of Section 29 of the NDPS Act and as per the law laid down by Apex Court in **Maulana Mohd. Amir Rashadi vs. State of U.P. and another, (2012) 2 SCC 382** and **Prabhakar Tewari vs. State of Uttar Pradesh and another, (2020) 11 SCC 648** while considering the application for bail role of accused in the present case only has to be considered and his claim cannot be rejected merely on the basis of such criminal antecedents.

6. I have heard Ld. Counsel for the parties and have gone through

the records of the case.

7. Co-accused Vijay Singh has been admitted to bail observing that :-

“Be that as it may, since the petitioner has been nominated on the basis of disclosure statement of co-accused, who has already been granted regular bail by this Court and the alleged recovery from the co-accused to the tune of 255 gms of heroin is marginally excess than the prescribed limit for commercial quantity, therefore, without meaning anything on merits of the case, I deem it appropriate to enlarge the petitioner on regular bail subject to his furnishing heavy bail bonds/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate.”

8. Even the principal accused Varinder Singh @ Nannu has also been granted benefit of bail holding that :-

“Learned counsel for the petitioner submits that in any case there is no other criminal case registered against the petitioner and as regards the allegation of recovery of contraband, even if that is taken at face value (though the petitioner does not admit it), it is only marginally above the threshold of commercial quantity, with the petitioner being in custody now for 11 months.

Having considered the above, without making any comment on the actual merits of the case, the petition is allowed, with the petitioner ordered to be admitted to bail to the satisfaction of the trial court/CJM/Duty Magistrate concerned.”

9. Keeping in view the incarceration already suffered by the petitioner, without commenting on the merits of the case and in view of the

fact that the co-accused(s) stand released and have been granted concession of bail, this Court finds no reason to decline that prayer made by the petitioner. Consequently, 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 the 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.

10. Needless to say that anything observed herein shall not be construed to be an expression of opinion on the merits of the case.

November 16, 2022
Dpr

(PANKAJ JAIN)
JUDGE

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