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

CRM-M-53327-2021

Date of Decision: 29.03.2022

Saurav Bhandari

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Johan Kumar, Advocate,
for the petitioner.

Mr. Ranvir Singh Arya, Addl. A.G., Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 439 of the Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.257 dated 14.06.2021, under Sections 22(c)/29-61-85 of the N.D.P.S. Act, 1985, registered at Police Station Dabua, Faridabad, District Faridabad.

Learned counsel for the petitioner has submitted that the petitioner was not named in the FIR and there is no allegation that he has been caught on the spot but his name was nominated thereafter on the basis of the disclosure statement of the co-accused. He further submitted that the recovery from the co-accused was only 29 injections of *Buprenorphine* having 2 ml. each which amounts to 58 ml and the commercial quantity is 20 ml. He further submitted that so far as the present petitioner is concerned, he is not involved in any other case and he has got clean antecedents and the statement of a co-accused is not admissible in evidence especially in view of the law laid down by the Hon'ble Supreme Court in

“Tofan Singh Vs. State of Tamil Nadu”, 2021(1) RCR (Criminal) 1. He further submitted that a reply/affidavit has been filed by the State and in the affidavit also there is nothing to suggest as to how the petitioner was involved in the present case apart from the disclosure statement which is otherwise not admissible in evidence. He also submitted that the petitioner is in custody from 27.09.2021 and the investigation of the present case has already been completed and Challan under Section 173 of the Cr.P.C. has also been presented before the competent Court, and therefore, considering the aforesaid facts and circumstances, the petitioner may be considered for the grant of regular bail. He also submitted that the bar contained under Section 37 of the N.D.P.S. Act will not be applicable in the present case in view of the aforesaid circumstances.

On the other hand, Mr. Ranvir Singh Arya, learned Additional Advocate General, Haryana, has submitted that it is correct that the petitioner is in custody from 27.09.2021 and after the investigation of the present case, Challan under Section 173 of the Cr.P.C. has been presented before the competent Court. He also submitted that although nothing was mentioned in the affidavit filed by the State with regard to any other sufficient material available apart from the disclosure statement of the co-accused but he has instructions to say that there was an exchange of phone calls between the petitioner and other co-accused for about 62 times between 11.06.2021 to 04.07.2021. Learned State Counsel further submitted that it is correct that the petitioner is not involved in any other case and his name was nominated only on the basis of the disclosure statement of the co-accused but has opposed the bail on the ground that one more accused is yet

to be arrested in the present case.

I have heard the learned counsel for the parties.

The custody of the petitioner is not in dispute and it is also not in dispute that the name of the petitioner was nominated on the basis of the disclosure statement of the co-accused. On a specific query being asked to the learned State counsel whether there any sufficient material available with the investigating agency with regard to the fact that as to how the petitioner was involved in the present case apart from the disclosure statement, the learned State counsel has submitted that although in the affidavit filed by the State, it has not been mentioned with regard to the phone calls exchange but it has been found that a number of phone calls were exchanged between the petitioner and the other co-accused. However, there was another specific query put to the learned State counsel that as to whether there are any phone call recordings available, he submitted that such recordings are not available with the Police. Therefore, the other factors are required to be considered for the purpose of considering departure from the bar contained under Section 37 of the N.D.P.S. Act. Admittedly, the petitioner has clean antecedents and he is not involved in any other case. The quantity of doses of *Buprenorphine* are although more than commercial but the same comes out to be 29 injections of 2 ml each. Mere exchanging of the phone calls without there being any supportive evidence with regard to the fact that as to whether these phone calls were pertaining to the present offence or between two acquaintances cannot become a ground for denial of the bail to the petitioner. In order to substantiate that the petitioner was involved in the present case there has to

be some cogent evidence but in the present case, it appears that there is nothing on record to show that the petitioner was involved in the present case apart from the disclosure statement of the co-accused, which is otherwise not admissible in evidence as per the law laid down by the Hon'ble Supreme Court in *Tofan Singh's case (surpa)*. However, this Court while dealing with the aspect of Section 37 of the N.D.P.S. Act is only to see as to whether at this stage this Court has reason to believe that the petitioner is guilty or not. This Court is of the view that on the basis of the aforesaid facts and circumstances at least at this stage, it seems that *prima facie* the petitioner is not guilty of an offence in the present case. So far as the second ingredient contained in Section 37 of the N.D.P.S. Act with regard to the apprehension of repetition, no such argument has been raised by the learned State counsel and therefore, both the ingredients are satisfied for making a departure from the bar contained under Section 37 of the N.D.P.S. Act.

In view of the aforesaid facts and circumstances, this Court is of the view that it is a fit case to grant regular bail to the petitioner, consequently, the present petition is allowed and the petitioner is ordered to be released on bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

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.

29.03.2022

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes |
| 2. Whether reportable: | Yes/No |