

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

**CRM-M-54492-2021
Date of Decision: 21.03.2022**

Sajan @ Ghulla

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Ragini Kukkar, Advocate
for the petitioner.

Mr. R.S. Thind, DAG, Punjab.

JASGURPREET SINGH PURI, J.(ORAL)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No.100, dated 18.05.2021 under Sections 21 and 61 of NDPS Act, 1985 (Section 29 of NDPS Act added later on) registered at Police Station Gate Civil Lines Batala, District Police, Batala.

It has been submitted by learned counsel for the petitioner that the name of the petitioner did not figure in the FIR and it was only on the basis of second disclosure statement made by the co-accused that the name of the petitioner has been nominated in the present FIR without any justification. Learned counsel has submitted that two persons, who have been named in the FIR have been apprehended and from them there was a recovery of 260 grams of heroin and on their disclosure statement, two more persons were nominated in the FIR and from them the recovery was of 256 grams of heroin and it was thereafter on the second disclosure statement made by Sukhwinder Singh @ Sonu, that the name of the present petitioner was nominated.

Learned counsel for the petitioner has submitted that the petitioner has clean antecedents and he is not involved in any other case and

there is no other material available with the police to connect the petitioner apart from the disclosure statement. She has submitted that in view of the law laid down by Hon'ble Supreme Court in **Tofan Singh vs. State of Tamilnadu, 2021 (1) R.C.R. (Criminal) 1**, a disclosure statement of co-accused in the absence of any other corroborative material, is not admissible in evidence *per se*. She has submitted that the petitioner is in custody from 15.06.2021 and the investigation of the case has been completed and the challan has also been presented and since the trial of the case would take long time, the petitioner may be considered for the grant of regular bail.

On the other hand, learned State counsel has submitted that it is correct that the petitioner is in custody from 15.06.2021 and the name of the petitioner was nominated on the basis of second disclosure statement. He has submitted that since the total quantity recovered from all the accused was commercial in nature, therefore, the bar contained under Section 37 of the NDPS Act would apply and the petitioner is not entitled for the grant of regular bail.

I have heard the learned counsel for the parties.

The petitioner is in custody from 15.06.2021 and investigation of the case has already been completed. On a specific query being raised to the learned State counsel as to whether apart from the disclosure statement of the co-accused whether the police has got any other material available to connect the petitioner or not, it was stated by the learned State counsel on instructions from ASI Jasvir Singh that there was no sufficient material available apart from the disclosure statement. Furthermore, the petitioner is not involved in any other case.

So far as the bar contained under Section 37 of the NDPS Act is concerned, the same has to be considered in view of the fact that the quantity

involved in the present case is of commercial in nature. The statement made by the co-accused by way of disclosure statement is not admissible in evidence *per se* in view of the law laid down by Hon’ble Supreme Court in **Tofan Singh vs. State of Tamilnadu, 2021 (1) R.C.R. (Criminal) 1.**

The State has not been able to justify or to state whether any other material is available with the police to connect the petitioner apart from the disclosure statement or not. So far as the second ingredient contained under Section 37 of the NDPS Act is concerned, as per counsel for the parties, the petitioner has clean antecedents and he is not involved in any other case and it is not the case of the State that in case the petitioner is released on bail then he may repeat the offence. Therefore, both the ingredients contained under Section 37 of the NDPS Act from making a departure from bar contained therein stand satisfied and this Court is of prima facie opinion that there are reasons to believe at least at this stage that the petitioner is not guilty of an offence and therefore, the bar contained under Section 37 of the NDPS Act would not apply in the present case.

Therefore, considering the totality of facts and circumstances of the present case, this Court deems it fit and proper to grant bail to the petitioner. Consequently, the present petition is allowed and the petitioner is released on bail on his furnishing adequate bail/ surety bonds to the satisfaction of the learned trial Court/ Chief Judicial Magistrate/ Duty Magistrate, concerned.

It is made clear that the aforesaid observations would not mean anything on the merits of the case, as the same are only for the purpose of deciding the present petition.

(JASGURPREET SINGH PURI)
JUDGE

March 21, 2022

MANPREET SINGH
2022.03.25 12:25
I attest to the accuracy of
this order.

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