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

**CRM-M-49697-2022
Date of Decision: 29.11.2022**

Dharam Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. S.S. Ranghi, Advocate and
Mr. J.S. Sekhon, Advocate
for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 438 of Code of Criminal Procedure for seeking grant of anticipatory bail in case FIR No.131 dated 29.09.2022, under Sections 18, 61 of the NDPS Act, 1985, (later on Sections 25, 29 of the NDPS Act, 1985 were added) registered at Police Station Ghanour, District Patiala.

It has been submitted by learned counsel for the petitioner that it is a case where there was a recovery of 1kg of Opium under the seat of a truck and which was being driven by the driver along with a conductor conductor of the truck. So far as the present petitioner is concerned he was neither inside the truck nor he had any connection with the alleged recovery of 1 kg Opium from the truck. He has been nominated on the basis of disclosure statement of the co-accused as he

was owner of the truck. He submitted that there was no recovery of any contraband from the conscious possession of the petitioner and even otherwise also the aforesaid quantity of 1kg of Opium does not fall in the category of commercial quantity under NDPS Act. He further submitted that the petitioner is not a habitual offender and he is not involved in any other case and the disclosure statement of the co-accused is not admissible in evidence in view of the judgment of Hon'ble Supreme Court in Tofan Singh Vs. State of Tamil Nadu 2021 (1) RCR (Cri.)1. He has further submitted that since the quantity does not fall in the category of commercial quantity, the bar contained under Section 37 of NDPS does not apply in the present case. He further submitted that be that as it may, this Court while issuing notice of motion, granted interim protection to the petitioner and in pursuance thereof he has already joined the investigation and has fully cooperated with the investigation process.

On the other hand, learned State counsel on instructions from SI Gurpreet Singh has submitted that the petitioner has joined investigation and he is not required for any custodial interrogation. He has also submitted that it is correct that the name of the petitioner was nominated on the basis of disclosure statement of the co-accused and the quantity does not fall in the category of commercial quantity. He further submitted that the petitioner not involved in any other case.

I have heard the learned counsel for the parties.

The petitioner was granted interim protection by this Court

vide order dated 26.10.2022 and as per the learned State counsel he has joined the investigation and he is not required for custodial interrogation. The alleged recovery from co-accused does not fall in the category of commercial quantity under the NDPS Act and the petitioner is not stated to be involved in any other case.

In view of the specific stand taken by the learned State Counsel, the present petition is allowed.

It is further directed that in future in case the petitioner is required for joining of investigation, then he shall join the investigation and cooperate with the investigation process. In the event of arrest, he shall be released on bail by the Arresting/Investigating Officer on his furnishing bail bonds/sureties to his satisfaction, subject to the conditions as provided under Section 438(2) Cr.P.C.

Petition stands disposed of.

29.11.2022

neelam

(JASGURPREET SINGH PURI)

JUDGE

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