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

CRM-M-49936-2022

Date of decision : 06.12.2022

Prabhjeet Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. H.S. Batth, Advocate for the petitioner.

Mr. Ramdeep Partap Singh, Sr. DAG, Punjab.

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of regular bail to the petitioner in FIR No.14 dated 20.01.2021 registered under Sections 21C, 25, 29 of the NDPS Act, 1985 at Police Station STF, District SAS Nagar, Mohali.

Learned counsel for the petitioner has submitted that neither the petitioner was named in the FIR nor any recovery has been effected from him and the recovery of 262 grams of heroin has been effected from two co-accused Deepak and Sonu and the petitioner as well as one Vishal Sharma were implicated on the basis of disclosure statements of the said co-accused persons. It is further submitted that the allegations levelled against the present petitioner and Vishal Sharma were to the same effect and the said co-accused Vishal Sharma has already been granted the concession of regular bail vide order dated 24.11.2021 passed in CRM-M-34771-2021 by a Coordinate Bench of this Court. It is contended that in the present case, the petitioner is in custody since 01.04.2021 and investigation is complete and challan has been

presented and there are 14 prosecution witnesses, out of which, none have been examined as yet and thus, the conclusion of trial is likely to take time. It is further contended that even after the petitioner was named in the disclosure statement, neither any recovery has been effected from him nor there is any incriminating evidence against the petitioner to link the petitioner with commission of the crime. Reliance has been placed upon the judgment passed by the Hon'ble Supreme Court in **Tofan Singh Vs. State of Tamil Nadu**, reported as **2021(1) RCR (Criminal) 1** to contend that disclosure statement made before the police is inadmissible in evidence.

On the other hand, learned State Counsel has opposed the present petition for grant of regular bail to the petitioner and has submitted that the recovery in the present case is of commercial quantity and thus, bar under Section 37 of NDPS Act would apply in the present case and that the petitioner is involved in one more case under the NDPS Act.

Learned counsel for the petitioner, in rebuttal, has relied upon the judgment of Hon'ble Supreme Court in ***“Maulana Mohd. Amir Rashadi vs. State of U.P. and another”***, reported as ***2012 (2) SCC 382*** to contend that the facts and circumstances of the present case are to be seen and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in another case. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

This Court has heard the learned counsel for the parties and has perused the paper book.

The Hon'ble Supreme Court in ***Tofan Singh's case*** (Supra), had observed as under:-

“152. Thus, to arrive at the conclusion that a confessional statement made before an officer designated under [section 42](#) or [section 53](#) can be the basis to convict a person under the [NDPS Act](#), without any non obstante clause doing away with [section 25](#) of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India.”

In the present case, the petitioner is in custody since 01.04.2021 and investigation is complete and challan has been presented and out of 14 prosecution witnesses, none have been examined as yet and thus, the conclusion of trial is likely to take time. The petitioner was not named in the FIR and no recovery has been effected from the petitioner and the recovery has been effected from two co-accused Deepak and Sonu and the said Deepak and Sonu had implicated the petitioner as well as one Vishal Sharma. The said Vishal Sharma has already been granted the concession of regular bail vide order dated 24.11.2021 passed in CRM-M-34771-2021 by a Coordinate Bench of this Court and the case of the present petitioner is on a similar footing as that of co-accused Vishal Sharma. Even after the disclosure statements had been made by the co-accused persons, no recovery has been effected from the present petitioner.

Keeping in view the abovesaid facts and circumstances and also in view of law laid down in ***Tofan Singh's case*** (Supra) and ***Maulana Mohd.***

Amir Rashadi's case (Supra), the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to him not being required in any other case. The petitioner shall also abide by the following conditions:-

1. The petitioner will not tamper with the evidence during the trial.
2. The petitioner will not pressurize/intimidate the prosecution witness(s).
3. The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
4. The petitioner shall not commit an offence similar to the offence of which he is accused, or for commission of which he is suspected.
5. The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer or tamper with the evidence.

In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

06.12.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No