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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-7635-2023

Decided on: 20.02.2023

Lakhwinder Singh

.... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Arjunveer Sharma, Advocate
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present is a second petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.63, dated 04.06.2021, under Sections 22/25/29 of the NDPS Act, registered at Police Station Barnala, District Barnala.

It has been submitted by learned counsel for the petitioner that the petitioner is in custody since 26.08.2021, which is almost 1½ years and 9 witnesses have already been examined. He further submitted that the petitioner is having clean antecedents and is not involved in any other case. He also submitted that earlier he had filed a bail petition before this Court which was dismissed on 12.09.2022 vide Annexure P-4 on the ground that the main accused, namely, Amandeep Singh @ Tili was arrested and 2000 tablets of *Tramadol* were recovered from him and on his disclosure statement, the petitioner along with two more co-accused were nominated in the present case.

The earlier bail petition of the petitioner was dismissed on the ground of Section 37 of the NDPS Act, since the recovery from the aforesaid co-accused was commercial in nature under the NDPS Act.

Learned counsel for the petitioner further submitted that so far as the antecedents of the present petitioner is concerned, he is not involved in any other case and there is no recovery from him. He also submitted that now the custody of the petitioner is almost 1½ years and there is no other sufficient material available with the prosecution to connect the petitioner with the present offence except for the disclosure statement of the aforesaid co-accused, namely, Amandeep Singh @ Tili. He further submitted that the disclosure statement of a co-accused is *per se* not admissible in evidence especially in view of the judgment passed by the Hon'ble Supreme Court in “Tofan Singh Vs. State of Tamil Nadu”, 2021(1) RCR (Criminal) 1.

Learned counsel for the petitioner also brought to the notice of the Court that now on 25.01.2023 vide Annexure P-2, the other similarly situated co-accused, namely, Mohit @ D.P. @ Mohit Kukreja and Sandeep Singh @ Saini have been extended the benefit of regular bail by this Court and one of the grounds taken was that their name was nominated on the basis of the disclosure statement of the co-accused. He further submitted that the petitioner is rather at a better footing than the aforesaid co-accused in view of the fact that the petitioner is not involved in any other case and there was no recovery from the petitioner. He submitted that in view of the aforesaid position and considering the parity and also the fact that the petitioner has already faced incarceration for almost 1½ years, he may be considered for the grant of regular bail.

On the other hand, Ms. Akshita Chauhan, DAG, Punjab, has

submitted that it is correct that the petitioner is in custody for almost 1½ years and his name was nominated on the disclosure statement of the aforesaid co-accused, namely, Amandeep Singh @ Tili.

I have heard the learned counsel for the parties.

On a specific query being raised to the learned State counsel during the course of arguments that as to whether there is any sufficient evidence available with the prosecution to connect the petitioner with the present offence except for the disclosure statement of the co-accused to which she submitted on instructions from ASI Gurtej Singh, who is present in the Court today that there is no other evidence available pertaining to the connection of the petitioner with the present offence except for the disclosure statement of the aforesaid co-accused. She further submitted that she has instructions to say that the petitioner is not involved in any other case and has got clean antecedents.

Although the earlier bail petition of the petitioner was dismissed on 12.09.2022, but now the total custody of the petitioner is almost 1½ years and after the dismissal of the earlier bail petition, this Court has extended the benefit of regular bail to the other two co-accused, namely, Mohit @ D.P. @ Mohit Kukreja and Sandeep Singh @ Saini, who were also nominated on the basis of the disclosure statement, on 25.01.2023 and this Court is of the view that the petitioner is rather at a better footing than the aforesaid co-accused. Therefore, considering the fact that the name of the petitioner was nominated on the basis of disclosure statement of the aforesaid co-accused, which is *per se* not admissible in evidence and as per the learned State counsel on instructions that there is no sufficient material available with the prosecution to connect the petitioner with the present offence apart from the disclosure

statement, the rigor of Section 37 of the NDPS Act will not apply to the present petitioner especially considering the long custody of the petitioner, which is almost 1½ years.

Apart from the above, when the bail petitions of the other co-accused, namely, Mohit @ D.P. @ Mohit Kukreja and Sandeep Singh @ Saini were considered by this Court, the effect of Section 37 of the NDPS Act was also considered in view of the judgment of the Hon'ble Supreme Court in **“Satender Kumar Antil Vs. Central Bureau of Investigation and another”**, **2022(10) SCC 51**, on the ground that repeated adjournments were granted by the trial Court whereby two prosecution witnesses, namely, SI Baljeet Singh and ASI Gurpal Singh were repeatedly summoned for about six times by way ofailable warrants and two times by way of non-ailable warrants despite the fact that ASI Gurpal Singh was summoned right from the beginning whereas SI Baljeet Singh was summoned thereafter, but the fact remains that there is no justification as to why the Court was compelled to issue repeated warrants for their presence once the criminal law was set into motion by those police officials themselves. This Court while dealing with Section 37 of the NDPS Act in the aforesaid bail petitions of the aforesaid co-accused, therefore, also came to the conclusion that the rigor of aforesaid Section 37 of the NDPS Act will not apply in the present case in view of the aforesaid facts and circumstances. The same is the position in the present case as well.

In view of the aforesaid totality of facts and circumstances, this Court deems it fit and proper 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.

20.02.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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