

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

224

CRM-M-8230 of 2023

Date of Decision:21.02.2023

Nanha

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. R.S. Mamli, Advocate,
for the petitioner.

Ms. Nidhi Garg, AAG, Haryana

JASGURPREET SINGH PURI, J. (Oral)

The present is the third petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.114 dated 28.05.2021, under Section 21(c)/29/61/85 of the NDPS Act, registered at Police Station Bahuakbarpur, District Rohtak.

Learned counsel for the petitioner has submitted that the petitioner has faced incarceration for about 1 year and 8 months since he is in custody from 16.06.2021. He submitted that the charges in the present case were framed on 07.06.2022 and thereafter no prosecution witness has been examined till date. He submitted that it is a case where as per the prosecution story, the other co-accused namely Dharmender was driving the car alongwith two ladies. There was an alleged recovery of 535 grams of heroin from the aforesaid co-accused Dharmender and so far as the other two co-

accused ladies are concerned, they have already been extended the benefit of bail by this Court vide Annexures P-2 and P-4. He submitted that it was only on the basis of the disclosure statement of the aforesaid co-accused, the name of the petitioner has been nominated and there is no sufficient evidence available with the prosecution to connect the petitioner with the present offence except the disclosure statement of the co-accused which is otherwise not admissible in evidence in view of the ratio of the judgment of the Supreme Court in **Tofan Singh versus State of Tamil Nadu 2021 (1) RCR (Criminal) 1.**

Learned counsel for the petitioner has submitted that be that as it may, the petitioner has already faced incarceration for 1 year and 8 months and his name was nominated on the disclosure statement of the co-accused and therefore he may be considered for the grant of regular bail.

On the other hand, Ms. Nidhi Garg, learned AAG, Haryana has submitted that it is correct that the name of the petitioner was nominated on the basis of the disclosure statement of the co-accused and the recovery was effected from the other co-accused namely Dharmender and no recovery of contraband was effected from the petitioner but only Rs.6000/- were recovered from him. She submitted that the petitioner is involved in two more cases under the NDPS Act and the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

However, learned counsel for the petitioner submitted that with regard to other cases under the NDPS Act, the petitioner is already on bail and since there was no recovery from the petitioner, the prayer of the

petitioner is not barred by the provisions of Section 37 of the NDPS Act and especially in view of the fact that his name was nominated on the basis of disclosure statement of the co-accused without there being any further link evidence to connect the petitioner with the present offence.

I have heard the learned counsels for the parties.

The petitioner has already faced incarceration for about 1 year and 8 months and his name was nominated on the basis of the disclosure statement of a co-accused. Although there are two other cases under the NDPS Act registered against the petitioner but according to learned counsel for the petitioner, the petitioner is already on bail in those cases. The charges in the present case were framed on 07.06.2022 but no prosecution witness has been examined till date despite the fact that about eight months have elapsed. During the course of arguments, a specific query was raised to learned State counsel, as to whether there was any other evidence available with the prosecution to connect the petitioner with the present offence except the disclosure statement of the co-accused, to which she submitted that as per her instructions, it was only on the basis of disclosure statement of the co-accused that the name of the petitioner was nominated.

This Court is of the view that in view of the aforesaid position, where the petitioner's name was nominated on the basis of disclosure statement of a co-accused which is otherwise not admissible in evidence *per se*, then for the purpose of considering the effect of Section 37 of the NDPS Act, the aforesaid facts and circumstances would certainly be relevant. Apart from the same, no recovery of contraband has been effected from the

petitioner and therefore this Court is of the *prima facie* view at least at this stage to have reasons to believe that only for the purpose of considering the grant of bail, the petitioner is not guilty of offence. Furthermore, it is not the case of the learned State counsel nor it has been argued by the learned State counsel that in case the petitioner is released on bail, then he may repeat the offence and therefore the second ingredient for making a departure from the bar contained under Section 37 of the NDPS Act also stands satisfied.

In view of the aforesaid totality of facts and circumstances, this Court deems it fit and proper to grant bail to the petitioner and especially considering the long custody of the petitioner of 1 year and 8 months and also in the light of Article 21 of the Constitution of India.

Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

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 the present petition.

(JASGURPREET SINGH PURI)
JUDGE

February 21, 2023

dinesh	Whether speaking	:	Yes/No
	Whether reportable	:	Yes/No