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2023:PHHC:045273

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.14608 of 2023 (O&M)

Date of decision: 28.03.2023

Harpreet Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. A.S. Brar, Advocate
for the petitioner.

Mr. Teevar Sharma, AAG, Punjab.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this 2nd petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.007 dated 14.01.2022, registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act (in short 'the NDPS Act') (Section 22 of the NDPS Act added later) at Police Station Nihal Singh Wala, District Moga.

The earlier one was dismissed as withdrawn on 19.05.2022.

Counsel for the petitioner has submitted that as per the allegations in the FIR, registered at the instance of ASI Amarjit Singh, while on petrol duty regarding search of suspicious elements, a car bearing registration No.PB11-CU-2178 was noticed coming from Bhagwanpura side and on giving signal to stop the car, the driver of the car suddenly applied break and stopped the car and a person had

opened the back side window on driver side and ran away towards the fields. He was chased by the police but could not be apprehended. Thereafter, the person who was sitting in the car disclosed his name as Tarsem Singh @ Sema and the person sitting on the co-driver seat disclosed his name as Jaspreet Singh @ Jashana. The name of the person, who ran away from the spot is disclosed by Tarsem Singh as Harpreet Singh @ Preet @ Gaggi.

Counsel for the petitioner has submitted that the recovery of 50 gms of Heroin was effected from the dashboard of the car, which was driven by Tarsem Singh @ Sema and the petitioner was arrested on 26.01.2022 and during the investigation, he got recovered 10 strips of Etezola and thereafter, Section 22 of the NDPS Act was added.

Counsel for the petitioner has further submitted that it will be a matter of trial whether the recovery, which was allegedly effected from the petitioner is the same recovery, which was sent to the FSL as in the report of FSL dated 22.03.2022, the sample parcel was found containing Etezola, however, in the recovery memo prepared by the Investigating officer, the recovery was of 10 strips of Etizolam.

Counsel for the petitioner has also argued that the petitioner is not involved in any other case and he was nominated in the case on the basis of the disclosure statement of the co-accused. Reliance has been placed upon the judgment ***“Tofan Singh vs State of Tamil Nadu”***, 2013(4) RCR (Criminal) 631, to submit that it will be a debatable issue whether the disclosure statement made by the co-accused will be admissible against the petitioner.

Lastly, it is argued that the petitioner is in custody for the last 01 year and 02 months and till date, no PW has been examined.

Counsel for the State, on instructions from SI Balbir Singh and on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 01 year and 02 months; the petitioner is not involved in any other case; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time and in view of “*Satender Kumar Antil vs Central Bureau of Investigation and another*”, passed in SLP (Crl.) No.5191 of 2021, decided on 11.07.2020, and *Tofan Singh’s case (supra)*, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

28.03.2023
yakub

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