

CRM-M-18697-2023

2023:PHHC:085923

-1-

218

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-18697-2023

Decided on: 07.07.2023

Shubham Kathuria

.... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. P.S. Hundal, Senior Advocate assisted by
Mr. Vikramjeet Singh, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present is the second petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.73 dated 06.05.2021, under Sections 22-C/29/61/85 of the NDPS Act, registered at Police Station Sangat, District Bathinda.

2. It has been submitted by learned Senior Counsel for the petitioner that the petitioner is in custody since 23.02.2022, which is 1 year, 4 months and 9 days and the confiscated quantity in the present case was 15000 tablets of *Celcidal 100 SR* and 25 vials of *Biorex* which was recovered from two of the co-accused, namely, Sagar and Aman Kumar. He further submitted that the co-accused, namely, Sukhpal Singh has since been released on regular bail by this Court in CRM-M-3716-2022 vide order dated 13.09.2022 (Annexure P-4) especially on the ground that his name was nominated on the basis of

disclosure statement of the aforesaid co-accused. Learned Senior Counsel further submitted that so far as the present petitioner is concerned, his name was also nominated on the basis of the disclosure statement of the co-accused and no recovery was effected from him. He also referred to the judgment passed by the Hon'ble Supreme Court in “Tofan Singh Vs. State of Tamil Nadu”, 2021(1) RCR (Criminal) 1, to contend that the disclosure statement of the co-accused is *per se* not admissible in evidence and it is a case where there is no sufficient evidence available with the police to connect the petitioner with the present offence and it was only on the basis of disclosure statement of the co-accused, the petitioner was nominated. He submitted that even otherwise also no recovery has been effected from the petitioner and he has already faced incarceration for 1 year, 4 months and 9 days, therefore, he may be considered for the grant of regular bail.

3. On the other hand, Mr. Rajiv Verma, DAG, Punjab, has submitted that it is correct that the petitioner is in custody from 1 year, 4 months and 9 days and no recovery has been effected from the petitioner, but it was effected from the other co-accused, on whose disclosure statement, the name of the petitioner was nominated. He has opposed the grant of regular bail to the petitioner on the ground that the recovery from the co-accused falls in the category of commercial quantity under the NDPS Act, therefore, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

4. I have heard the learned counsel for the parties.

5. It is a case where the petitioner has already faced incarceration for 1 year, 4 months and 9 days and as per the learned State counsel, 1 out of 18 witnesses has been examined. No recovery has been effected from the

petitioner and his name was nominated on the basis of disclosure statement of the co-accused. The other co-accused, namely, Sukhpal Singh, who was also nominated on the basis of the disclosure statement of the co-accused, has been admitted to regular bail by this Court vide Annexure P-4. Since the recovery was not effected from the petitioner, therefore, rigors of Section 37 of the NDPS Act will not apply in the present case qua the present petitioner. Furthermore, it is neither the case of the State nor it has been argued by the learned State counsel that in case the petitioner is released on bail then he may abscond or flee from justice or may influence the witness or may tamper with the evidence.

6. Therefore, considering the aforesaid facts and circumstances of the present case and also considering the long custody of the petitioner, which is about 1 year, 4 months and 9 days, 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 regular bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

7. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant only for the purpose of decision of present petition.

07.07.2023*Bhumika***(JASGURPREET SINGH PURI)
JUDGE**

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