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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-30043-2023 (O&M)
Date of Decision: 05.07.2023

Anoop Singh @ Anoop

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Parveen Chauhan, Advocate, for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No.156 dated 14.07.2022, under Sections 21-C and 29 of NDPS Act, registered at Police Station STF, SAS Nagar, Mohali, Punjab.

2. Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case and even as per the allegations contained in the FIR, there was an alleged recovery of 325 grams of heroin from a co-accused, namely, Rahul Bhatia and the aforesaid co-accused Rahul Bhatia had disclosed that he got the aforesaid heroin from another co-accused namely Nishan Singh and that was done at the asking of the present petitioner. He submitted that there has been neither any recovery from the

petitioner because he was already in jail in some other matter nor there has been any other connectivity except for the disclosure statement of a co-accused. He submitted that the petitioner is in custody for about 1 year i.e. from 15.07.2022 and the mere fact that he was already lodged in jail in some other case that he has been falsely implicated in the present case. He further referred to a judgment of the Hon'ble Supreme Court in *Tofan Singh V/s. State of Tamil Nadu' [2021 (1) RCR (Criminal) 1]* to contend that the disclosure statement of a co-accused is not admissible in evidence unless it is so supported by other sufficient material. He submitted that the mere fact that it has been so stated by the co-accused that at the instance of the petitioner heroin was delivered by one other co-accused, namely, Nishan Singh to the co-accused, namely, Rahul Bhatia cannot be termed as a sufficient ground to connect the petitioner with the present offence especially when he was already in jail. He submitted that there is no other case against the petitioner under the NDPS Act and only one case against the petitioner in which he is facing trial is under Section 302 IPC and it was because of that reason that he has been falsely implicated in the present case.

3. On the other hand, Mr. Rajiv Verma, DAG, Punjab has submitted that it is correct that the petitioner is in custody for about 1 year and the challan has already been presented in the present case. He has however submitted that since at the instance of the petitioner, the co-accused had received the heroin which falls in the category of commercial quantity, he is not entitled for the grant of regular bail.

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

5. It is a case where the petitioner has already faced incarceration

for about 1 year and even as per the prosecution, the petitioner was already in jail in some other case and the allegation against the petitioner is only based upon a disclosure statement of a co-accused that at his instance heroin of 325 grams was delivered by co-accused, namely, Nishan Singh to the other co-accused namely Rahul Bhatia. As per the learned counsel for the parties, the petitioner is not involved in any other case under the NDPS Act and he was already in custody at the time of the lodging of the present FIR. Since no recovery has been effected from the petitioner and the State counsel has not been able to bring anything on record to connect the petitioner with the present offence except for the disclosure statement of a co-accused, this Court is of the view that considering the fact that no recovery has been effected from the petitioner at all even as per the State, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner. Furthermore, it is not the case of the State that in case the petitioner is released on bail in the present case, then he may influence any witness or may tamper with evidence or may flee from justice. Therefore, this Court is of the view that both the ingredients for making a departure from the bar contained under Section 37 of the NDPS Act remain satisfied.

6. In view of the aforesaid facts and circumstances, this Court deems it fit and proper to grant regular bail to the petitioner.

7. 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, if not required in any other case.

8. However, anything observed hereinabove shall not be treated as

an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

05.07.2023

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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