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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-26708-2023 (O&M)
Decided on: 10.10.2023

Ashok Kumar @ Bablu

.... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sajal Bansal, Advocate
for the petitioner.

Mr. Naveen Kumar Sheoran, DAG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

CRM-42809-2023

For the reasons mentioned in the application, the same is allowed and the copies of the orders passed in CRM-M-19643 & 41359-2023 are taken on record as Annexures P-4 & P-5, subject to all just exceptions.

CRM-M-26708-2023

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 case FIR No.335 dated 08.06.2022, under Sections 18 & 29 of the NDPS Act, (Section 29 of the NDPS Act added later on) registered at Police Station Pinjore, District Panchkula.

2. Learned counsel for the petitioner submitted that the petitioner is in custody from last 10 months and the investigation of the case has already been completed and thereafter, challan has also been presented before the

competent Court but no witness has been examined till date. He further submitted that the petitioner is not involved in any other case and has clean antecedents and he has been falsely implicated in the present case purely on the basis of the disclosure statement of the co-accused, namely, Munna Lal. He submitted that the aforesaid Munna Lal was also nominated on the basis of the disclosure statement of the co-accused, namely, Nirmal Singh, who was apprehended at the spot along with 3.5 kgs. of *Opium*. He further submitted that in this way the present petitioner was nominated on the basis of second disclosure statement and so far as the aforesaid Munna Lal on the basis of whose statement the name of the petitioner was nominated is concerned, he has already been extended the benefit of regular bail by a Co-ordinate Bench of this Court on 13.09.2023 in CRM-M-41359-2023 vide Annexure P-5. He also submitted that there is no other material available with the police to connect the petitioner with the present offence apart from the disclosure statement which is not admissible in evidence *per se* and once the person on whose disclosure statement the petitioner was nominated, has already been extended the benefit of regular bail by a Co-ordinate Bench of this Court, therefore, the petitioner may also be considered for the grant of regular bail and particularly in view of the fact that the petitioner is having clean antecedents and is not involved in any other case. He submitted that although the confiscated quantity recovered from the co-accused, namely, Nirmal Singh falls in the category of commercial quantity but considering the aforesaid facts and circumstances where the petitioner was nonnominated purely on the basis of the disclosure statement, the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner. 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 in this regard.

3. On the other hand, Mr. Naveen Kumar Sheoran, DAG, Haryana, submitted that it is correct that the petitioner is in custody from 10 months and has clean antecedents and is not involved in any other case. He further submitted that it is also correct that the aforesaid co-accused, namely, Munna Lal on whose disclosure statement, the name of the petitioner was nominated has already been extended the benefit of regular bail by a Co-ordinate Bench of this Court vide Annexure P-5. He has opposed the grant of regular bail to the petitioner on the ground that the recovery from the co-accused, namely, Nirmal Singh 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 faced incarceration for 10 months and his name was nominated on the basis of disclosure statement of the co-accused, namely, Munna Lal, who has already been admitted to regular bail by a Co-ordinate Bench of this Court vide Annexure P-5. The aforesaid Munna Lal was also nominated on the basis of disclosure statement of the co-accused, namely, Nirmal Singh, from whom, there was a recovery of 3.5 kgs. of *Opium*. Apart from the above, one another co-accused, namely, Pawan Kumar @ Darvesh @ Mota has also been extended the benefit of regular bail by this Court on the basis of the aforesaid judgment of the Hon'ble Supreme Court passed in Tofan Singh's case (supra). The petitioner is stated to be having clean antecedents and is not involved in any other case and therefore,

he is at parity with the aforesaid co-accused. 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. In view of the aforesaid facts and circumstances of the present case, this Court is of the view that the rigors of Section 37 of the NDPS Act will not apply in the present case qua the present petitioner and therefore, the petitioner is entitled for the grant of regular bail. 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.

10.10.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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