

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.208

Case No. : CRM-M-27421-2022

Date of Decision : January 31, 2023

Avtar Singh @ Bablu

.... Petitioner

vs.

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Yashpal Thakur, Advocate
for the petitioner.

Ms. Himani Arora, AAG, Punjab.

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GURBIR SINGH, J. :

This is a petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.156 dated 14.11.2021, under Section 22-C/61/85 of the NDPS Act, 1985 (Section 29 added later on), registered at Police Station Bassi Pathana, District Fatehgarh Sahib.

Learned counsel for the petitioner states that the petitioner was implicated in this case on the basis of disclosure statement made by co-accused in custody.

Learned counsel for the petitioner further states that as per the prosecution version, 1220 loose tablets were recovered from the possession of the co-accused, which he stated to have been brought from the petitioner. However, no other evidence was collected by the Investigating Agency about the involvement of the petitioner. In fact, the petitioner was away to Golden Temple at Amritsar from 13.11.2021 to 15.11.2021. In support of

his contention, he has annexed photographs (Annexure P-3) to prove this fact. There is also a receipt given by the Hotel (Annexure P-4) regarding stay of the petitioner from 13.11.2021 to 15.11.2021, indicating that the petitioner was in Amritsar during that period. It is further contended that when the petitioner was not in town on 13.11.2021, there was no question of supplying the tablets to the co-accused.

Learned counsel for the petitioner has relied upon a judgment of Hon'ble Supreme Court in **Toofan Singh vs. State of Tamil Nadu – Criminal Appeal No.152 of 2013**, decided on 29.10.2020, wherein it is held that disclosure statement made by a co-accused is not admissible in evidence against another co-accused in terms of Section 67 of the NDPS Act. Reliance has also been placed on **Kamal Kishore vs. State (Delhi Administration) – 1992 (2) Crime 169 (Delhi)**, wherein it was held that informatory statement amounting to confession of the accused cannot be used against the co-accused.

Learned State Counsel, on the other hand, while opposing the prayer made by learned counsel for the petitioner, has placed on record the Custody Certificate dated 29.11.2022 of the petitioner showing that the petitioner is in custody since 28.04.2022. It is further submitted by learned State counsel that other cases are also registered against the petitioner under the NDPS Act. So, he does not deserve the concession of regular bail.

Learned counsel for the petitioner has rebutted the submissions of learned State counsel by submitting that the petitioner was falsely implicated in other cases which relate to non-commercial quantity. He is on bail in two cases and third case is disposed off. Fifth case is under Section

52-A of Prison Act. He was convicted in this case but has already undergone the imprisonment.

Learned State counsel also conceded that there is no other case except the disclosure statement of the co-accused.

Heard.

In this case, the petitioner is in custody since 28.04.2022 and no recovery is effected from him in this case. He is implicated in the present case on the basis of disclosure statement made by co-accused, from whom, loose tablets were recovered under the NDPS Act. There is no other evidence collected against the petitioner.

In view of law laid down in **Toofan Singh** (*supra*), disclosure statement made by a co-accused is not admissible in evidence against another co-accused. Moreover, completion of trial will also take a long time. Therefore, no useful purpose would be served by keeping the petitioner behind bars for a long period.

Accordingly, without commenting upon the merits of the case, the present petition is allowed and the petitioner is directed to be released on regular bail, on his furnishing bail bonds/surety bonds, to the satisfaction of learned Trial Court/Duty Magistrate, Fatehgarh Sahib.

However, nothing contained herein above shall be construed as an expression of opinion on the merits of the case.

January 31, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.

