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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-13681 of 2023 in/ and
CRM-M No.33427 of 2022 (O&M)
Date of Decision: 27.03.2023

Charanjeet Singh @ Channi

..... Petitioner

V/s.

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Charanjit Singh Bhakhshi, Advocate
for the petitioner-applicant.

Ms. Nidhi Garg, AAG, Haryana.

JASGURPREET SINGH PURI, J (Oral)

The present is a second petition filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR No.37 dated 18.01.2022, under Sections 18, 61 and 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (Section 27-A of NDPS Act, added later on) registered at Police Station Sadar, Thanesar, District Kurukshetra.

The earlier bail petition was dismissed as withdrawn on 24.03.2022 (Annexure P-1). It has been submitted by the learned counsel for the petitioner that the petitioner is in custody since 19.01.2022 which is more than 01 year and 02 months. He further submitted that the investigation of the case has been completed and the challan has been presented before the competent Court, even after seeking extension of time.

Learned counsel submitted that it is a case where the petitioner is having clean antecedents and is not involved in any other case and he has been falsely implicated on the basis of rivalry with the other transporters since the

petitioner is also a transporter in Himachal Pradesh. He submitted that as per the allegations, on the basis of a secret information, the co-accused namely Amarjit Singh was apprehended and from whom there was the alleged recovery of 4.5 kgs of opium. Thereafter, the name of the petitioner was nominated on the basis of a disclosure statement of the aforesaid co-accused and on the basis of the aforesaid disclosure statement, the petitioner was arrested but there was no recovery from the petitioner. He submitted that even otherwise also, the allegation against the petitioner was that the aforesaid opium was to be supplied to the petitioner but there is no evidence to support the same. He further submitted that the alleged contraband was found in a Truck which does not belong to the opponent of the petitioner and it was only because of the rivalry that he has been falsely implicated in the present case and therefore he may be considered for the grant of regular bail.

On the other hand, learned State counsel on instructions, submitted that it is correct that the petitioner is in custody for about 01 year and 02 months and now the investigation of this case is completed, and challan has been presented but the charges have not been framed till date. She submitted that it is also correct that the name of the petitioner was nominated on the basis of the disclosure statement of the co-accused who was apprehended on the spot alongwith 4.5 Kgs of opium. She also stated that the petitioner is not involved in any other case. She has however opposed the grant of bail to the petitioner on the ground that the aforesaid contraband of 4.5Kgs of opium falls in the category of commercial quantity and therefore, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

I have heard learned counsel for the parties.

Present is a case where the petitioner had already faced incarceration of about 01 year and 02 months. Investigation of the case has been completed and now the case is under consideration for framing of the charges. Admittedly, the confiscation of contraband was done from the co-accused, namely Amarjit Singh and not from the petitioner. As per learned counsel for the parties, no recovery was effected from the petitioner and the name of the petitioner was nominated on the basis of a disclosure statement of the co-accused. The petitioner is stated to be having clean antecedents and is not involved in any other case. It is a settled law that a disclosure statement of the co-accused is not admissible evidence and a reference in this regard is made in judgment of Hon'ble Supreme Court in ***Tofan Vs. State of Tamil Nadu [2021(1) RCR(Criminal)1]***. The connection of the petitioner, if any, is to be established at the time of trial by way of adducing evidence. Apart from the above, the petitioner is stated to be not involved in any other case and as per learned counsel for the petitioner, it is only because of professional rivalry that his name was nominated. And also, it is not a case of learned State counsel that in case the petitioner is released on bail, then he may abscond from justice or may repeat the offence.

Therefore, considering the prayer of the petitioner from the angle of the bar contained under Section 37 of the NDPS Act, the facts and circumstances of the present case that the name of the petitioner was nominated only on the basis of the disclosure statement of the co-accused and no recovery has been effected from the petitioner, this Court is of the view that atleast at this stage, for the purpose of considering the petition for grant of bail, there are prima facie reasons to believe that the petitioner is not guilty of offence. Apart from the above, since the petitioner is not involved in any other case and is having clean antecedents and nor it has been so argued by learned State counsel that in case the

petitioner is released on bail, he may repeat the offence or may abscond from justice, the second ingredient for making a departure from the bar contained under Section 37 of the NDPS Act remains satisfied.

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

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.

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.

Since the main petition has been allowed, all the pending application(s) also stand(s) disposed of.

27th March, 2023

Sonia Puri

(JASGUPREET SINGH PURI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No