

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

109+217

CRM-M-31409-2023 (O&M)

Date of Decision: 15.12.2023

Shiva

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present:- Mr. Karandeep S. Sidhu, Advocate,
for the petitioner.

Mr. Shubham Kaushik, AAG, Punjab.

VIKAS SURI, J. (Oral)

CRM-52760-2023

This is an application under Section 482 Cr.P.C. for placing on record order dated 06.04.2021, whereby the petitioner has been granted the concession of bail in case FIR No.47 dated 25.03.2021, under Section 25 of Arms Act, registered at Police Station Sadar Faridkot, District Faridkot, as Annexure P-5 and for exemption from filing certified copy thereof.

Notice of the application.

Mr. Shubham Kaushik, AAG, Punjab, accepts notice on behalf of respondent-State and submits that the order dated 06.04.2021 granting bail is a matter of record and the same is also reflected in the latest custody certificate of the petitioner-applicant.

For the reasons mentioned in the application, same is allowed.

Annexure P-5 is taken on record, subject to all just exceptions.

CRM stands disposed of.

CRM-M-31409-2023

1. Through the present petition filed under Section 439 of the Code of Criminal Procedure (Cr.P.C. for short), the petitioner seeks grant of regular bail in case FIR No.13 dated 14.01.2023, under Section 21 of NDPS Act (Section 29 of NDPS Act added later on), registered at Police Station Sadar Ferozepur.

2. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. The name of the petitioner is not mentioned in the FIR and has surfaced in the disclosure statement of co-accused Rohit son of Jinder, who was apprehended at the spot and alleged recovery of 357 grams of heroin was effected from him. It is submitted that other than the disclosure statement, there is no other material on record to connect the petitioner with the commission of offence. Nothing has been recovered from the possession of the petitioner by the police at the time of his arrest. Learned counsel further submits that in the light of the ratio in *Tofan Singh vs. State of Tamil Nadu*, (2021) 4 SCC 1, the confessional statement recorded under Section 67 of the NDPS Act is inadmissible. Reliance has also been placed upon the Division Bench judgment of this Court in *Dharamveer and another vs. State of Punjab*, Law Finder Doc Id#2005311, to contend that in the absence of recovery of any contraband from the petitioner, rigors of Section 37 of NDPS Act would not apply. It is further submitted that the investigation in the present case is

complete; *challan* stands presented before the Court; charges stand framed; out of 14 prosecution witnesses cited, none has been examined so far; petitioner is in custody since 21.03.2023; trial is at the initial stage and may take long time to conclude; no useful purpose would be served by keeping the petitioner behind bars for an indefinite period.

3. Per contra, learned State counsel has opposed the present petition while placing on record custody certificate of the petitioner dated 14.12.2023. Learned State counsel submits that the petitioner has been named as seller of the contraband in the disclosure statement and is involved in two other criminal cases under the NDPS Act. However, the factual aspects are not controverted. It is not disputed that no recovery has been effected from the petitioner and he has been nominated as an accused only on the basis of disclosure statement of co-accused Rohit son of Jinder. It is also not disputed that other than the disclosure statement, there is no material on record against the petitioner in the present case. Learned State counsel has not been able to refute that the petitioner has already been granted the concession of regular bail in the two cases mentioned in the custody certificate.

4. Heard learned counsel for the petitioner and considered the rival contentions advanced by them.

5. Keeping in view all the aspects and the ratio of ***Tofan Singh's case*** and ***Dharamveer's case*** (supra); petitioner has been nominated on the basis of disclosure statement of co-accused Rohit son of Jinder; petitioner is in custody since 21.03.2023; investigation is complete; *challan* stands presented charges have been framed; out of 14 prosecution witnesses cited,

none has been examined so far; trial is at the initial stage and may take considerable time to conclude; petitioner is on bail in the two other cases mentioned in the custody certificate; and no useful purpose would be served by keeping him behind bars for an indefinite period pending trial, the present petition deserves to be accepted.

6. Accordingly, without commenting upon the merits of the case, the instant bail petition is allowed and petitioner is ordered to be released on regular bail, in case not required in any other case, subject to his furnishing bail-bond and surety/sureties to the satisfaction of concerned trial Court/Duty Magistrate.

7. It is made clear that the petitioner shall not influence the trial or any prosecution witnesses in any manner directly or indirectly.

8. It is made clear that any observations or submissions noted above shall not be construed as an expression of opinion on the merits of the case and the trial Court shall decide the case on the basis of material available on record.

December 15, 2023

harish

(VIKAS SURI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No