

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.208

Case No. : CRM-M-33937-2022

Date of Decision : February 28, 2023

Mohammad Ishan Petitioner

vs.

State of Haryana Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Alok Mittal, Advocate
for the petitioner.

Mr. Karan Sharma, DAG, Haryana.

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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.0699 dated 28.08.2021, under Sections 21-C, 29, 61, 85 of the NDPS Act, 1985, registered at Police Station City Yamuna Nagar, District Yamuna Nagar.

As per the case of the prosecution, Sahil @ Chucha (co-accused of the petitioner) was found in possession of 300 grams smack. On interrogation, he suffered a disclosure statement and named the petitioner who had supplied smack to him.

Learned counsel for the petitioner has submitted that the petitioner has no role to play in the recovery of smack from co-accused. Any statement by an accused in custody is inadmissible unless it leads to disclosure of some fact.

Learned State counsel has placed on file Status Report by way of affidavit of Kanwaljeet Singh, HPS, Deputy Superintendent of Police, Yamuna Nagar, on behalf of respondent-State and has submitted that co-accused Sahil @ Chucha, who is real brother of the petitioner, was apprehended with 300 grams smack. He made disclosure statement that the present petitioner was indulging in selling smack and the same was given to him by the petitioner, to be handed over to some other person whose name was not known to him. Learned State counsel has further submitted that two other cases under NDPS Act were registered against the petitioner. Two other cases under IPC were also registered against the petitioner. In one of the cases under Sections 356, 379 IPC, he was convicted.

Learned counsel for the petitioner states that as per details of cases against the petitioner filed by learned State counsel (Annexure R-3), there are total five cases registered against the petitioner, out of which he has already been acquitted in the cases mentioned at Sr.Nos.1 and 2. In case at Sr. No.3, he was granted bail as recovery was of 05.04 grams of smack.

Heard.

Learned State counsel has very fairly admitted the fact that the petitioner has been implicated in this case only on the basis of disclosure statement made by co-accused. No recovery is effected from the petitioner in this case. He also admitted that except the disclosure statement, no other evidence has been collected against the petitioner in this case.

In this case, the petitioner is in custody since 13.07.2022. The disclosure statement made by the co-accused is hit by Section 67 of the NDPS Act. This view of mine finds support from the law laid down by

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.

Keeping in view the fact that the petitioner is in custody since 13.07.2022 and the completion of trial will also take a long time, 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, Yamuna Nagar.

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

February 28, 2023
monika

(GURBIR SINGH)
JUDGE

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