

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

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CRM-M-32477 of 2023

Date of Decision:14.07.2023

Devender Singh

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sunil Kumar Goswami, Advocate,
for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.0163 dated 09.04.2022, under Sections 20, 27-A, 29-61-85 of the NDPS Act (Sections 27-A, 29 of the NDPS Act and Section 201 IPC added later on), registered at Police Station Sadar Jind, District Jind.

2. It is submitted by learned counsel for the petitioner that the petitioner is in custody from 24.02.2023 and the investigation of the case has already been completed and thereafter the final report under Section 173 of the Code of Criminal Procedure was presented before the competent Court. He submitted that it is a case where the petitioner's name was nominated after some time on the basis of disclosure statement made by the another co-accused, namely, Pala Ram and so far as the present petitioner is concerned, there was no other evidence to show with

regard to the connectivity of the petitioner with the present offence except for the disclosure statement made by the co-accused. He submitted that the disclosure statement of a co-accused itself is not admissible in evidence *per se* and therefore has relied on the judgment of the Supreme Court in **Tofan Singh versus State of Tamil Nadu 2021 (1) RCR (Criminal) 1** in this regard. He further brought to the notice of this Court that both the persons from whom the recovery was effected i.e. Pawan @ Pona and Pardeep @ Tinku have already been enlarged on bail by the learned trial Court although default bail under Section 167(2) of the Code of Criminal Procedure. He submitted that so far as the present petitioner is concerned, he is not involved in any other case and has clean antecedents and it was only on the basis of disclosure statement of one of the co-accused, namely, Pala Ram, the name of the petitioner was nominated and therefore he may be considered for the grant of regular bail.

3. On the other hand, Mr. Vishal Kashyap, DAG, Haryana has submitted that it is correct that two persons from whom the recovery was effected, namely, Pawan @ Pona and Pardeep @ Tinku have already been enlarged on default bail and so far as the present petitioner is concerned, no recovery has been effected from him but his name was nominated on the basis of the disclosure statement of another co-accused, namely, Pala Ram and the aforesaid co-accused, namely, Pala Ram was also nominated on the basis of disclosure statement of the aforesaid two co-accused, namely, Pawan @ Pona and Pardeep @ Tinku. He also submitted, on instructions, that the petitioner is not a habitual offender and is not involved in any other case.

4. I have heard learned counsel for the parties.

5. It is a case where although there was a recovery of 17 kgs. of charas from other co-accused, namely, Pawan @ Pona and Pardeep @ Tinku but no recovery has been effected from the petitioner as per learned counsels for the parties and his name was nominated on the basis of disclosure statement of the co-accused Pala Ram whose name was also nominated on the basis of disclosure statement of aforesaid two co-accused, namely, Pawan @ Pona and Pardeep @ Tinku who have already since been admitted to default bail. Since no recovery has been effected from the present petitioner, the rigor of Section 37 of the NDPS Act would not apply in the present case. Apart from the above, it has been so stated by learned counsel for the parties, that the petitioner has clean antecedents and is not involved in any other case and also it is not the case of learned State counsel that in case the petitioner is released on bail, then he may abscond from justice or influence any witness.

6. In view of the aforesaid facts and circumstances, this Court deems it fit and proper to grant bail to the petitioner. Consequently, the present petition is allowed. The petitioner shall be released on regular bail, if not required in any other case, subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

7. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of the present petition.

(JASGURPREET SINGH PURI)
JUDGE

July 14, 2023

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Whether speaking

: Yes/No

Whether reportable

: Yes/No