

CRM-M-32600-2023

2023:PHHC:122108

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-32600-2023

Decided on: 15.09.2023

Gulab Singh

.... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. L.S. Sekhon, Advocate
for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.16 dated 04.03.2023, under Sections 22/27/29 of the NDPS Act and Section 379 & 411 IPC registered at Police Station Sanaur, District Patiala.

2. It has been submitted by learned counsel for the petitioner that the petitioner is in custody since 05.03.2023 and the investigation of the case has already been completed and thereafter, challan has also been presented before the competent Court. He further submitted that the name of the petitioner was nominated only on the basis of the disclosure statement of the co-accused from whom there was an alleged recovery of 70 grams of *Diphenoxylate* which although falls in the category of commercial quantity under the NDPS Act but so far as the present petitioner is concerned, there was no recovery effected from him and his name cropped up only on the basis of the disclosure

statement of the co-accused, which is otherwise not admissible in evidence *per se* especially in view of the judgment passed by the Hon'ble Supreme Court in "*Tofan Singh Vs. State of Tamil Nadu*", 2021(1) RCR (Criminal) 1. He further submitted that it is a case where there is no sufficient evidence available with the police to connect the petitioner with the present offence and it was only on the basis of disclosure statement of the co-accused, the petitioner's name was nominated. He submitted that in view of the aforesaid facts and circumstances, the petitioner may be considered for the grant of regular bail.

3. On the other hand, Mr. Sarabjit Singh Cheema, learned DAG, Punjab, has submitted that it is correct that the petitioner is in custody since 05.03.2023 and no recovery has been effected from him, but it was effected from the other co-accused, on whose disclosure statement, the name of the petitioner was nominated. He, has however, opposed the grant of regular bail to the petitioner on the ground that the petitioner is involved in one more case under the NDPS Act in which there was a recovery of *Poppy Husk* and also on the ground that the contraband recovered from the co-accused falls in the category of commercial quantity under the NDPS Act, therefore, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

4. I have heard the learned counsel for the parties.

5. It is a case where the petitioner is in custody since 05.03.2023 and after the completion of investigation of the case, challan has already been presented before the competent Court. As per the learned counsels for the parties, the name of the petitioner was nominated on the basis of disclosure statement of the co-accused from whom there was a recovery of 70 grams of

Diphenoxylate which falls in the category of commercial quantity under the NDPS Act. However, so far as the present petitioner is concerned, no recovery was effected from him and his name was nominated only on the basis of the disclosure statement of the co-accused. Since the recovery was not effected from the petitioner, therefore, rigor of Section 37 of the NDPS Act will not apply in the present case. Furthermore, it is neither the case of the State nor it has been argued by the learned State counsel that in case the petitioner is released on bail then he may abscond or flee from justice or may influence the witness or may tamper with the evidence.

6. Therefore, considering the aforesaid facts and circumstances of the present case and also considering the aforesaid judgment passed by the Hon'ble Supreme Court in **Tofan Singh's case (Supra)**, this Court deems it fit and proper to grant regular bail to the petitioner. Consequently, the present petition is allowed and the petitioner is ordered to be released on regular bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

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

15.09.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |