

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

218

CRM-M-35742 of 2023

Date of Decision:31.07.2023

Harjinder Singh @ Johny

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sandeep Kumar Passi, Advocate,
for the petitioner.

Mr. J. S. Arora, DAG, Punjab

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.169 dated 16.05.2022, under Sections 22(c) of the NDPS Act (Section 29 of the NDPS Act added later on), registered at Police Station City Faridkot, District Faridkot.

2. It is submitted by learned counsel for the petitioner that the petitioner is in custody for seven months and six days. He submitted that the investigation of the present case has already been completed and the final report under Section 173 of the Code of Criminal Procedure has been presented to the competent Court. He submitted that the name of the petitioner was nominated purely on the basis of the disclosure statement of the co-accused, namely, Sukhchain Singh @ Kaka from from whom there was an alleged recovery of 1000 tablets of Tramadol. He submitted that the petitioner is not involved in any other case and has clean

antecedents. He submitted that the name of the petitioner had surfaced only on the basis of the disclosure statement which is not *per se* admissible in evidence in view of the ratio of a judgment of the Supreme Court in **Tofan Singh versus State of Tamil Nadu** 2021 (1) RCR (Criminal) 1. He further submitted that there is no evidence available with the prosecution to connect the petitioner with the present offence except the disclosure statement of the co-accused which is not admissible in evidence. He submitted that in view of the aforesaid facts and circumstances of the present case, he may be considered for the grant of regular bail.

3. On the other hand, Mr. J. S. Arora, learned DAG, Punjab has stated that it is correct that the petitioner has already faced incarceration for about seven months and six days and the police has completed the investigation and the *challan* has already been presented to the competent Court. He further submitted that so far as the antecedents of the present petitioner is concerned, he is not involved in any other case.

4. I have heard learned counsel for the parties.

5. It is a case where the petitioner has already faced incarceration for about seven months and six days. The petitioner is not involved in any other case and has clean antecedents. The name of the petitioner has been nominated on the basis of the disclosure statement of the co-accused which is not admissible in evidence as per the judgment of the Hon'ble Supreme Court in ***Tofan Singh's*** case (supra). Learned State counsel has not been able to point out any other material or evidence to show the connection of the petitioner with the present offence except the disclosure statement of the co-accused. No recovery has been effected from the petitioner as per learned counsel for the petitioner. Therefore, this Court is of the

view that the bar contained under Section 37 of the NDPS Act will not apply in the present case. 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.

6. 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 31, 2023

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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No