

CRM-M-45225-2021

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-45225-2021
Date of Decision: 18.10.2023

Shaurab

..... Petitioner

Versus

Union of India

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. J.S. Hooda, Advocate,
for the petitioner.

Ms. Puneeta Sethi, Senior Panel Counsel,
for the respondent-UOI.

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 bearing NCB Crime No.6 dated 21.01.2021, under Section 8, 20(b)(ii)(c), 25, 27-A, 29, 60 of the NDPS Act, registered at Police Station NCB Chandigarh.

2. Learned counsel for the petitioner submitted that the petitioner is in custody for about 2 years and 9 months and the charges in the present case were framed on 21.09.2021 and thereafter, out of 25 cited witnesses, only 2 witnesses have been examined completely and 4 witnesses have been examined in part. He further submitted that the allegations in the present case were pertaining to confiscation of 6.840 kgs. of *Charas* from the co-accused, namely, Lakhmi Chand, Krishna, Shyam Singh and Jaidev and

thereafter, on the basis of disclosure statement of co-accused, the name of the petitioner was nominated. He also submitted that the prosecution does not have any sufficient material to connect the petitioner with the present offence except for the disclosure statement of the co-accused which is not admissible in evidence even as per the judgment of Hon'ble Supreme Court "*Tofan Singh Vs. State of Tamil Nadu*", 2021(1) RCR (Criminal) 1. He further submitted that considering the custody of the petitioner which is about 2 years and 9 months, he may be considered for the grant of regular bail.

3. On the other hand, Ms. Puneeta Sethi, Senior Panel Counsel appearing on behalf of the respondent/NCB submitted that so far as the custody of the present petitioner is concerned, the same is not in dispute and it is also correct that the name of the petitioner was nominated on the basis of disclosure statement of co-accused, but he is involved in one more case although he has been granted regular bail in that case by an order passed by this Court on even date.

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

5. The petitioner has already faced incarceration for about 2 years and 9 months and till date only 2 witnesses have been examined completely and 4 witnesses have been examined in part after the framing of the charges. The name of the petitioner surfaced on the basis of disclosure statement of co-accused from whom there was a recovery of 6.840 kgs. of *Charas*. Therefore, this Court would consider the effect of Section 37 of the NDPS Act in the present case upon the petitioner considering the fact that the recovery falls in the commercial quantity but the same was not recovered

from the petitioner, but from the other co-accused and the name of the petitioner had surfaced on the basis of the disclosure statement of the co-accused, but as per the learned counsel for the parties, there was no recovery effected from the present petitioner.

6. On a query being raised to the learned counsel for the respondent/NCB as to whether there is any other sufficient material connecting the petitioner with the present offence apart from the disclosure statement of the co-accused to which she submitted that there are call details between the petitioner and the co-accused, but there are no call recording as such, as per her instructions from the I.O. Rahul Saini.

7. Therefore, this Court is of the view that the petitioner has already faced incarceration for about 2 years and 9 months and at least at this stage the bar contained under Section 37 of the NDPS Act will not apply to the petitioner because his name was surfaced on the basis of disclosure statement of co-accused which is not admissible in evidence as per the judgment of Hon'ble Supreme Court in *Tofan Singh's case (supra)* and apart from the aforesaid disclosure statement nothing incriminating material has come up on record. Although this Court does not wish to make any observation with regard to the merits of the case but only for the purpose of considering the prayer of the petitioner for grant of regular bail, considering the aforesaid facts and circumstances and also the long custody of the petitioner, this Court deems it fit and proper to grant regular bail to the petitioner.

8. Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety

bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

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

18.10.2023 (JASGURPREET SINGH PURI)
Bhumika JUDGE

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