

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

CRM-M-39570-2023 (O&M)

Date of Decision: 21.08.2023

Hardeep Singh @ Suraj

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Ramandeep Kaur, Advocate, for the petitioner.

Mr. Harsimar Singh Sitta, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No.50 dated 06.06.2020, under Section 15 of NDPS Act (Section 29 of NDPS Act added later on), registered at Police Station Ajitwal, District Moga, Punjab.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody from 21.06.2021 which is almost 2 years and 2 months. She submitted that the petitioner has been falsely implicated in the present case on the basis of disclosure statement of a co-accused and no recovery has been made from the petitioner. She further submitted that the alleged recovery from the co-accused was 75 kgs. of poppy husk which although falls in the category of commercial quantity but so far as the present petitioner is concerned, there was no recovery effected from the petitioner and the reason as to why the name of the petitioner was nominated falsely was that the petitioner was earlier involved in other cases pertaining to NDPS Act. She submitted that be that as

it may the petitioner has already faced incarceration for 2 years and 2 months and 5 out of 9 witnesses have been examined and there is no material available with the prosecution to connect the petitioner with the present offence except for the disclosure statement of the co-accused which is otherwise not admissible in evidence per se in view of the judgment of the Supreme Court in *Tofan Singh V/s. State of Tamil Nadu' [2021 (1) RCR (Criminal)1]* and therefore, the petitioner may be considered for the grant of regular bail.

3. On the other hand, Mr. Harsimar Singh Sitta, DAG, Punjab has submitted that it is correct that the petitioner is in custody for 2 years and 2 months and recovery was effected from the co-accused and not from the petitioner. He further submitted that the petitioner is involved in two more cases under the NDPS Act and some other cases as well and therefore, the petitioner is not entitled for the grant of regular bail.

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

5. It is a case where the petitioner has already faced incarceration for 2 years and 2 months and as per the learned counsel for the parties, there was no recovery effected from the petitioner and his name has been nominated on the basis of disclosure statement of a co-accused. On a query being raised to the learned State counsel during the course of arguments as to whether there was any other connecting material or sufficient material available with the prosecution to connect the petitioner with the present offence except for the disclosure statement of the co-accused to which he on instructions stated that no such material was available. In view of the above the mere fact that the petitioner is involved in some more cases cannot become a ground for denial of bail to the petitioner in view of the fact that the name of the petitioner has been nominated on the basis of disclosure statement of a co-accused which is not

per se admissible in evidence. Be that as it may even otherwise also the

petitioner has already faced incarceration for 2 years and 2 months, Therefore, in the light of the aforesaid facts and circumstances where recovery was not effected from the petitioner, the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner for the purpose of considering his petition for grant of regular bail. Therefore, this Court is of the view that the petitioner deserves the concession of regular bail in the light of Article 21 of the Constitution of India. Reference in this regard was also made to the judgment of the Hon'ble Supreme Court in *Rabi Prakash Versus State of Odisha, Special Leave to Appeal (Crl.) No.4169 of 2023*.

6. Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned 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 for the purpose of deciding the present petition only.

21.08.2023

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No
: Yes/No