

CRM-M-43584-2023

2023:PHHC:142187

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-43584-2023
Decided on: 06.11.2023

Satnam Singh

.... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sudhir Hooda, Advocate
for the petitioner.

Mr. H.S. Sitta, 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.125 dated 10.10.2022, under Sections 22(c) & 25 of the NDPS Act and Section 29 of the NDPS Act added later on, registered at Police Station Rangar Nangal, District Batala.

2. Learned counsel for the petitioner submitted that the petitioner is in custody from 6½ months 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 petitioner was nominated on the basis of the disclosure statement of the co-accused from whom there was a recovery of 3800 intoxicant tablets and 1400 capsules having the salt of *Tramadol Hydrochloride* which although falls in the category of commercial quantity under the NDPS Act but so far as the present petitioner is concerned,

his name was nominated purely on the basis of disclosure statement of the co-accused and there is no connectivity of the petitioner with the present offence except for that of the disclosure statement of the co-accused which is not admissible in evidence especially in view of the law laid down by the Hon'ble Supreme Court in “*Tofan Singh Vs. State of Tamil Nadu*”, 2021(1) RCR (Criminal) 1. He further submitted that the reason as to why the petitioner was falsely implicated in the present case is that he was earlier involved in 5 more cases under the NDPS Act out of which in one case he was convicted but in the present case, there is no evidence or anything on record to show that the petitioner is in any way connected with the present offence except for the disclosure statement made by the co-accused. He submitted that considering the aforesaid factual position, the petitioner may also be considered for the grant of regular bail.

3. On the other hand, Mr. H.S. Sitta, learned DAG, Punjab, submitted that it is correct that the petitioner is in custody from 6½ months and his name was surfaced on the basis of the disclosure statement of the co-accused. He has opposed the grant of regular bail to the petitioner on the ground that the petitioner is involved in 5 more cases under the NDPS Act and also on the ground that the recovered quantity 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 counsels for the parties.

5. It is a case where the petitioner has faced incarceration for 6½ months. As per the learned counsels for the parties, the name of the petitioner was surfaced on the basis of disclosure statement of the co-accused. During

the course of the arguments, a specific query was raised to the learned State counsel as to whether there is any sufficient material available with the prosecution to connect the petitioner with the present offence except for the disclosure statement of the co-accused, he after taking specific instructions from police official, who is present in the Court today, stated that as per record there is no such other material available except for the disclosure statement. It is a settled law especially in the matters pertaining to the NDPS Act that the disclosure statement of a co-accused is *per se* not admissible in evidence. A reference can be made in this regard to the judgment of the Hon'ble Supreme Court passed in *Tofan Singh's case (supra)*. The mere fact that the petitioner is involved in some other case under the NDPS Act cannot become a ground for denial of bail to the petitioner.

6. In view of the aforesaid facts and circumstances of the present case, this Court is of the view that the rigors of Section 37 of the NDPS Act will not apply in the present case qua the present petitioner and therefore, the petitioner is entitled for the grant of regular bail. 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.

06.11.2023

Bhumika(JASGURPREET SINGH PURI)
JUDGE

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