

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

213

CRM-M-47950 of 2022

Date of Decision:11.01.2023

Robin @ Ritik Gupta

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Amitabh Tewari, Advocate,
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

The present is a second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.70 dated 17.06.2021, under Sections 22, 25, 29, 61 and 85 of the NDPS Act, registered at Police Station Barnala, District Barnala.

It has been submitted by the learned counsel for the petitioner that the petitioner is in custody from 04.07.2021, which is almost 1½ years. He submitted that it is a case where the allegations against the petitioner were that he had been supplying Tramadol tablets to the main accused namely Amritpal Singh @ Bittu and Pardeep Kumar @ Fauji from whom there was a recovery of contraband. He submitted that the name of the petitioner was nominated on the basis of a disclosure statement of the co-accused namely Amritpal Singh @ Bittu who disclosed the name of the petitioner as well as another co-accused namely Hemant

Pal. He further submitted that the petitioner has been falsely implicated in the present case and there is no other sufficient material available with the prosecution to connect the petitioner with the present offence except for the disclosure statement of a co-accused which is otherwise not admissible in evidence *per se* especially in view of the law laid down by the Hon'ble Supreme Court in a judgment of the Supreme Court in Tofan Singh versus State of Tamil Nadu 2021 (1) RCR (Criminal) 1. He submitted that the other aforesaid co-accused namely Hemant Pal who is at parity with the present petitioner has been extended the benefit of bail by this Court in CRM-M-29364 of 2022 on 29.09.2022 which order has been passed after the first bail petition filed by the petitioner was dismissed as withdrawn and thereafter the successive bail application is filed. He has further submitted that not only the aforesaid co-accused Hemant Pal but even the other co-accused namely Banti Kaur @ Ghoga from whom there was alleged recovery of 1830 loose tablets of Tramadol and who was also nominated on the basis of disclosure statement of a co-accused has also been extended the benefit of bail by this Court in CRM-M-42793 of 2021 on 17.05.2022 and the petitioner is parity with the aforesaid two co-accused. He has further submitted that in fact the reason as to why the petitioner has been falsely implicated is that earlier he was involved in one case under the NDPS Act in which he is on bail and only because of that reason this case has been planted upon the petitioner. He further submitted that when the bail petition of the aforesaid Hemant Pal was considered by this Court one of the reason was also that after the framing of the charges on 29.03.2022 no witness was examined despite the fact that there had been 4-5 adjournments and this Court in that case also while referring to the judgment of the Supreme Court in

Satender Kumar Antil v. Central Bureau of Investigation and another 2022

(10) SCC 51 had observed that the bar contained under Section 37 of the NDPS Act would not apply. He submitted that since the facts and circumstances of the present case are similar except that now two witnesses have been examined after the passing of the earlier orders but the bar of Section 37 will not apply in the present case as well.

The learned counsel further submitted that so far as the recovery of 1500 tablets from the petitioner is concerned, the same was planted upon the petitioner, which is clear from the fact that the petitioner's name was nominated on the basis of disclosure statement and he was subsequently arrested on 04.07.2021 and was on police remand but the recovery on the basis of the disclosure statement of a co-accused has been made on 12.07.2021 which is totally improbable story put forward by the prosecution.

On the other hand, Ms. Akshita Chauhan, learned DAG, Punjab has stated that it is correct that the petitioner is in custody for about 1½ years from 04.07.2021 and now two witnesses have been examined, including the investigating officer. She submitted that the petitioner is not entitled for the grant of regular bail on the ground that the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act because after his name was nominated there was a recovery of 1500 tablets from the petitioner. She further submitted that the petitioner is also involved in one more case under the NDPS Act. She however submitted that the petitioner is at parity with the aforesaid co-accused namely Hemant Pal and Banti Kaur @ Ghoga.

I have heard the learned counsel for the parties.

The period of custody of the petitioner is not in dispute and it is also not in dispute that the name of the petitioner has been nominated on the basis of disclosure statement of the co-accused namely Amritpal Singh.

On a query being raised to the learned State counsel during the course of arguments as to whether there is any other sufficient material available with the State to connect the present petitioner with the present offence or any other sufficient material has been found during the course of investigation with regard to the same except for disclosure statement of co-accused. She stated, on instructions from SI Amar Nath, that there is no such material available except for the disclosure statement of the co-accused.

It is settled law that the statement of a co-accused is *per se* not admissible in evidence as held by the Hon'ble Supreme Court in ***Tofan Singh*** (supra). As per learned counsel for the parties, no such other sufficient material is available with the police to connect the petitioner with the present offence. So far as the recovery of 1500 tablets from the petitioner is concerned, as per the learned counsel for the petitioner the same was recovered after lapse of seven days. Be that as it may, the petitioner stated to be at parity with the aforesaid two co-accused namely Hemant Pal and Banti Kaur @ Ghoga.

In view of the above, this Court is of the *prima facie* view at least at this stage there are reasons to believe that the petitioner is not guilty of the offence. Consequently, the bar contained under Section 37 of the NDPS Act will not apply in the present case and therefore the present petition deserves to succeed.

In view of the facts and circumstances as narrated above, this Court is of the view that the petitioner deserves the concession of regular bail. 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.

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

January 11, 2023
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No