

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-48743-2022

Date of Decision:-06.01.2023

Karamjit Singh @ Mitru.

.....**Petitioner.**

Versus

State of Punjab.

.....**Respondent.**

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Rishabh Gupta, Advocate for the Petitioner.

Ms. Ramta Chowdhary, Deputy Advocate General, Punjab.

JASJIT SINGH BEDI, J. (ORAL)

1. The Prayer in this petition is for the grant of regular bail under Section 439 Cr.PC in case FIR No.30 dated 25.05.2022 under Sections 22, 27 and 29 of NDPS Act registered at Police Station Mehal Kalan, District Barnala.

2. The brief facts of the case are that on 25.05.2022 a police party was present at Mehal Kalan when a special informer came and informed them that Jasbir Singh @ Totti and Bhawandeep Singh @ Bhawna were habitual of selling intoxicating tablets and both of them were going towards village Kalsa on their motor cycle make Splender bearing registration number PB-03-AU-7254 in order to try to sell the tablets. In case a barricading was done at Kalsa road both of them could be apprehended.

Based on the information the FIR came to be registered and a

nakabandi was set up. Two persons were seen coming on the aforementioned motor cycle and on seeing the police party tried to take a U turn. However, they were apprehended and they disclosed their names as Bhawandeep Singh @ Bhawna and Jasbir Singh @ Totti. One plastic polythene containing loose intoxicating tablets was lying between both of them. One Iqbal was joined in as a witness in the police party. Ultimately on search 960 loose tablets were recovered which were subsequently known to be Tramadol Hydrochloride.

On 27.05.2022 during investigation both the accused disclosed that they used to purchase the intoxicating tablets from Ravi resident of village Roomi Tehsil Jagraon and would sell the same to Karamjit Singh @ Mitru (petitioner) who further sold the same to other people for profit. Based on the said disclosure statement, Ravi and the petitioner were nominated as an accused and an offence under Section 29 of the NDPS Act was added.

During investigation the petitioner was arrested on 26.07.2022 and from his possession an Optra Car bearing registration no.PB-10G-0046 was recovered. However, no contraband was recovered.

Ravi remained untraceable and therefore, the report under Section 173(2) Cr.PC has been submitted against the remaining three accused.

3. The Counsel for the petitioner contends that the petitioner has been named in the disclosure statement of his co-accused and pursuant to his arrest, no recovery has been effected from him. He places reliance upon the judgments in “**Tofan Singh Vs. State of Tamil Nadu, 2020 AIR (Supreme Court) 5592, Rakesh Kumar Singla Vs. Union of India**

2021(1) RCR (Criminal) 704, State by (NCB) Bengaluru Vs. Pallulabid Ahmad Arimutta & Anr. 2022(1) RCR (Criminal) 762, Surinder Kumar Khanna Vs. Intelligence Officer, Director of Revenue Intelligence, 2018(3) RCR (Criminal) 954 and Sanjeev Chandra Aggarwal & Anr. Versus Union of India 2021(4) RCR (Criminal) 590 to contend that the said disclosure statement has no evidentiary value. He thus contends that the petitioner ought to be granted the concession of regular bail.

4. The Counsel for the State on the other hand contends that the petitioner is a habitual offender with a numbers of cases registered against him. He however, does not deny the fact that no recovery has been effected from the petitioner and there is no other case under the NDPS Act registered against him.

5. I have heard the learned Counsel for both the parties and gone through the records of the case.

6. The Hon'ble Supreme Court in *State of Haryana Vs. Samarth Kumar 2022(3) R.C.R.(Criminal) 991* has held as under:-

*“ 4. The High Court decided to grant pre-arrest bail to the respondents on the only ground that no recovery was effected from the respondents and that they had been implicated only on the basis of the disclosure statement of the main accused Dinesh Kumar. Therefore, reliance was placed by the High Court in the majority judgment of this Court in **Tofan Singh v. State of Tamil Nadu reported in (2021) 4 SCC 1.***

5. But, it is contended by the learned Additional Advocate General appearing on behalf of the State of Haryana that on the basis of the anticipatory bail granted to the respondents, the Special Court was constrained to grant regular bail even to the main accused-Dinesh Kumar and he jumped bail. Fortunately, the main accused-Dinesh Kumar has again been apprehended. According to the learned Additional Advocate General, the respondent in the second of these appeals is also a habitual offender.

6. *Learned counsel appearing on behalf of the respondent in the first of these Appeals contends that the State is guilty of suppression of the vital fact that the respondent was granted regular bail after the charge-sheet was filed and that therefore, nothing survives in the appeal. But, we do not agree.*

7. *The order of the Special Court granting regular bail to the respondents shows that the said order was passed in pursuance of the anticipatory bail granted by the High Court. Therefore, the same cannot be a ground to hold that the present appeals have become infructuous.*

8. *In cases of this nature, the respondents may be able to take advantage of the decision in **Tofan Singh v. State of Tamil Nadu (supra)**, perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.*

9. *To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondents.*

10. *In view of the above, the appeals are allowed. The impugned orders are set-aside. As a consequence, the Appellant-State is entitled to take steps, in accordance with law.”*

Thus it is apparent that the case of the petitioner for grant of regular bail can be considered when the only evidence is that he has been named in a disclosure statement.

7. Undoubtedly, there are 05 other cases registered against the petitioner. However, none of them pertains to the NDPS Act. Further in two of the said cases the petitioner stands acquitted as is borne out from para no.10 of the reply filed by the State. No recovery has been effected from the petitioner. As such, a *prima facie* satisfaction can be recorded under Section 37 of the NDPS Act. The petitioner is otherwise in custody since 27.07.2022 and none of the prosecution witnesses have been examined so far. As such the trial of the present case is not likely to be concluded anytime soon. Therefore, the further incarceration of the

petitioner is not required.

8. Keeping in view the aforementioned facts but without commenting on the merits of the case, the present petition is allowed and the petitioner **Karamjit Singh @ Mitru** son of Sh. Gurbakshish Singh @ Gurbaksh Singh is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, concerned.

The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other crime other than the present case.

In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

Petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

January 06, 2023
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>