

CRM-M-48788-2022

212

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-48788-2022
Date of Decision: 24.07.2023

Devender @ Bolli

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. V.B. Godara, Advocate,
for the petitioner.

Mr. Naveen Kumar Sheoran, DAG, Haryana.

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 FIR No.197 dated 16.09.2021, under Section 21(C)/27-A/29 of the NDPS Act, registered at Police Station Sadar Tohana, District Fatehabad.
2. It has been submitted by learned counsel for the petitioner that the petitioner is in custody since 29.04.2022 which is 1 year, 2 months and 25 days. He further submitted that the charges in the present case were framed on 11.04.2023 and as per the allegations there was a recovery of 265 grams of *Heroin* from the co-accused, namely, Vikram @ Vicky and Sonu, which is marginally higher than the prescribed commercial quantity under the NDPS Act. He also submitted that the name of the petitioner has been nominated on the basis of the disclosure statement of the co-accused and there is no other material evidence available with the police to connect the

petitioner with the present offence and in view of the judgment passed by the Hon'ble Supreme Court in "*Tofan Singh Vs. State of Tamil Nadu*", 2021(1) RCR (Criminal) 1, the said disclosure statement is not admissible in evidence *per se*. He further submitted that the petitioner has been falsely implicated in the present case only on the ground that the petitioner was earlier involved in 9 cases and that was the reason, his name has been nominated in the present case. He also submitted that be that as it may even otherwise also the aforesaid co-accused, namely, Sonu, who is the main accused in the present case, has already been extended the benefit of regular bail by a Co-ordinate Bench of this Court in CRM-M-5379-2022 on 05.05.2022 (Annexure P-4) and so far as the present petitioner is concerned, his name has surfaced only on the basis of the disclosure statement of the aforesaid co-accused and therefore, the petitioner may be considered for the grant of regular bail. He also pointed out that even after the framing of the charges, till date not even a single prosecution witness has been examined and the trial has been delayed at the fault of the prosecution.

3. On the other hand, Mr. Naveen Kumar Sheoran, learned DAG, Haryana, submitted that so far as the custody of the petitioner is concerned, the same is correct and it is also correct that the charges were framed on 11.04.2023 and till date no witness has been examined. He has however opposed the grant of bail to the petitioner on the ground that he is involved in 9 more cases out of which although the petitioner has been acquitted in some of the cases and also on the ground that recovered quantity from the co-accused is 265 grams of *Heroin* which falls in the category of commercial quantity and therefore, the prayer of the petitioner is hit by the

bar contained under Section 37 of the NDPS Act. He further submitted that there are some telephone conversation between the petitioner and the other co-accused, namely, Sonu and therefore, it cannot be said that the prosecution does not have any connecting material evidence available apart from the disclosure statement.

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

5. The case of the petitioner is that he has been falsely implicated in the present case because he was earlier involved in 9 more cases under the NDPS Act and he has now already faced incarceration for 1 year, 2 months and 25 days. As per Annexure P-4, the co-accused, namely, Sonu, from whom there was an alleged recovery along with the other co-accused has already been enlarged on bail by a Co-ordinate Bench of this Court and so far as the present petitioner is concerned, his name was nominated only on the basis of the disclosure statement of the aforesaid co-accused. After the framing of the charges on 11.04.2023, not even a single witness has been examined. The recovery from the other co-accused was marginally higher than the prescribed commercial quantity under the NDPS Act. Even as per the learned counsel for the parties, there was no recovery effected from the petitioner. Therefore, considering the aforesaid circumstances where no recovery was effected from the petitioner in the present case and he has already faced incarceration for 1 year, 2 months and 25 days and the fact that the other co-accused, from whom there was an alleged recovery, has been enlarged on bail, this Court is of the view that the bar contained under Section 37 of the NDPS Act will not be applicable to the present petitioner especially considering the judgments passed by the Hon'ble Supreme Court

in “Satender Kumar Antil Vs. Central Bureau of Investigation and another”, 2022(10) SCC 51, “Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)”, 2023 AIR(SC) 1648,” and also the latest judgment passed by the Hon’ble Supreme Court in *Special Leave to Appeal (Criminal) No.4169 of 2023* titled as “Rabi Prakash Vs. The State of Odisha” decided on 13.07.2023. Apart from the above, it is neither the case of the State nor it has been argued by the learned State counsel that in case the petitioner is released on bail then he may abscond or flee from justice or may influence the witness or may tamper with the evidence.

6. Therefore, considering the aforesaid totality of circumstances of the present case and especially in view of the total custody of the petitioner and that the name of the petitioner has been nominated on the basis of the disclosure statement of the co-accused, this Court, therefore, deems it fit and proper to grant regular bail to the petitioner, especially in the light of Article 21 of the Constitution of India.

7. 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.

8. 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 present petition.

24.07.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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