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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-48014-2023
Date of decision: 17.10.2023

LAKHWINDER SINGH

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Abhinav Singla, Advocate
for the petitioner.

Mr. Gurdarshan Singh Sidhu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.100 dated 19.09.2022, under Sections 15, 29, 61 and 85 of the NDPS Act, registered at Police Station Haryana, District Hoshiarpur, Punjab.

2. Learned counsel for the petitioner submitted that the petitioner is in custody for 1 year and 16 days and it is a case where the name of the petitioner was nominated on the basis of disclosure statement of other co-accused, namely, Kulwinder Kaur and Rinku @ Param Dev. He further submitted that so far as co-accused, namely, Kulwinder Kaur is concerned, she has been extended the benefit of default bail by Judge, Special Court, Hoshiarpur on 27.03.2023 vide Annexure P-3 and so far as other co-accused, namely, Rinku @ Param Dev

is concerned, he has been extended the benefit of regular bail by a Coordinate Bench of this Court on 21.12.2022 vide Annexure P-4. He also submitted that the allegation against the petitioner was that while he was in jail in some other case, he had asked his own wife, namely, Kulwinder Kaur to supply 53 kgs. of poppy husk to other co-accused. He also submitted that it was only on the basis of the disclosure statement of the aforesaid co-accused that the name of the petitioner was nominated and in fact it was a false implication because of the fact that the petitioner was already in custody in some other case. He also submitted that there is no material available with the prosecution to connect the petitioner with the present offence except for the disclosure statement of the aforesaid co-accused, who have already been granted bail as aforesaid and it is a settled law that the disclosure statement of co-accused is not admissible in evidence *per se* and he has referred to a judgment of Hon'ble Supreme Court in **Tofan Singh versus State of Tamil Nadu, 2021 (1) RCR (Criminal) 1** in this regard. He further submitted that the total custody of the petitioner is 1 year and 16 days and even otherwise also the total confiscated quantity from the other co-accused is 53 kgs. of poppy husk and the commercial quantity under the NDPS Act is 50 kgs and therefore considering the aforesaid facts and circumstances of the present case, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner.

3. On the other hand, Mr. Gurdarshan Singh Sidhu, AAG, Punjab submitted that it is correct that the petitioner is in custody for 1 year and 16 days and recovery from the aforesaid co-accused was 53 kgs. of poppy husk but it still falls in the category of commercial quantity. He further submitted that the

petitioner is involved in four more cases under the NDPS Act and so far as the present case is concerned, his name was nominated on the basis of disclosure statement of the aforesaid co-accused, who have already been granted bail as aforesaid. He also submitted that none of the prosecution witness has been examined till date because charges have been framed in July, 2023.

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

5. The petitioner is in custody for 1 year and 16 months and none of the prosecution witness has been examined till date and charges in the present case were framed in July, 2023. The confiscated quantity was 53 kgs. of poppy husk which is marginally higher than the commercial quantity. As per the learned counsel for the petitioner, there is no other material available with the prosecution to connect the petitioner with the present offence because he was already in custody in some other case and there was a recovery of 53 kgs. of poppy husk from the wife of the petitioner, namely, Kulwinder Kaur on whose disclosure statement the name of the petitioner was nominated and it was only a concocted story of the prosecution. The mere fact that the petitioner is involved in some other cases under the NDPS Act would not become a ground for denial of regular bail to the petitioner in view of the aforesaid facts and circumstances of the present case. The name of the petitioner was nominated on the basis of disclosure statement of aforesaid co-accused and as per the judgment of Hon'ble Supreme Court in **Tofan Singh's case (supra)**, the disclosure statement of co-accused is not admissible in evidence *per se*. It can be ascertained only at the time of trial as to whether there was any material available with the prosecution to connect the petitioner with the present offence or not. Therefore,

this Court is of the view that the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner particularly in view of the fact that even as per the State, after the name of the petitioner was nominated, there has been no recovery from the petitioner.

6. Therefore, considering the aforesaid totality and circumstances of the present case, this Court deems it fit and proper to grant regular bail to the petitioner.

7. Consequently, the present petition is allowed. The petitioner shall be released on regular bail, if not required in any other case, subject to furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

8. However, anything observed hereinabove shall not be treated as an expression of opinion on the merits of the case and is meant for the purpose of deciding the present petition only.

17.10.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No