

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.212

Case No. : CRM-M-59285-2022

Date of Decision : March 03, 2023

Sunil Kumar @ Bulla

.... Petitioner

vs.

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Narinder S. Lucky, Advocate
for the petitioner.

Mr. G. S. Shergill, AAG, Punjab.

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GURBIR SINGH, J. :

This is a petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.45 dated 20.04.2022, under Sections 21, 22 and 29 of the NDPS Act, 1985, registered at Police Station Sadar, District Jalandhar.

Learned counsel for the petitioner has submitted that the petitioner has been nominated in this case on the basis of disclosure statement made by co-accused Gagandeep Ram. After a few months thereof, the petitioner was arrested and 105 grams of intoxicant powder i.e. Tramadol Hydrochloride was recovered from the petitioner, which falls under the non-commercial quantity. The recovery of intoxicant substance from co-accused has no co-relation with the alleged recovery from the petitioner. The petitioner was arrested on 16.09.2022 and is behind bars

since then. Therefore, it is prayed by learned counsel for the petitioner that concession of regular bail be granted to him.

Learned State Counsel, on the other hand, while opposing the prayer made by learned counsel for the petitioner, has filed the Custody Certificate of the petitioner. However, he does not deny the fact that the petitioner is in custody since 18.09.2022.

Heard.

As per version of the prosecution, co-accused Gagandeep Ram was apprehended with two polybags, one containing 2.6 gm of heroin and second containing 189 intoxicant tablets allegedly containing salt "Etizolam". The said quantity of tablets was falling under the commercial quantity. He made disclosure statement and nominated the present petitioner. Section 29 of the NDPS Act was added. The petitioner was arrested. In police remand, the petitioner made disclosure statement and got recovered 105 grams of intoxicant powder i.e. Tramadol Hydrochloride.

In this case, petitioner is in custody for the last 05 months and 15 days. He was nominated on the basis of disclosure statement made by co-accused. The nomination of petitioner under Section 29 NDPS Act is hit by Section 67 of the NDPS Act. I draw support from the law laid down by Hon'ble Supreme Court in **Toofan Singh vs. State of Tamil Nadu – Criminal Appeal No.152 of 2013**, decided on 29.10.2020, wherein it is held that disclosure statement made by a co-accused is not admissible in evidence against another co-accused in terms of Section 67 of the NDPS Act. It is debatable if recovery from the co-accused has any co-relation with

more than four months.

Keeping in view the fact that the petitioner is in custody since 18.09.2022; the recovery effected from him falls under non-commercial quantity; he is on bail in another case filed against him under the NDPS Act and the completion of trial will also take a long time, no useful purpose would be served by keeping the petitioner behind bars for a long period.

Accordingly, without commenting upon the merits of the case, the present petition is allowed and the petitioner is directed to be released on regular bail, on his furnishing bail bonds/surety bonds, to the satisfaction of learned Trial Court/Duty Magistrate, Jalandhar.

However, nothing contained herein above shall be construed as an expression of opinion on the merits of the case.

March 03, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.