

CRM-M-60075-2023 -1-

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(237)

CRM-M-60075-2023
Date of decision:- 05.12.2023

Tekan Ganju @ Tekan Ganjhu ... Petitioner
Versus
State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Kanwaljeet Singh, Advocate
for the petitioner.

Mr. Anup Singh, AAG, Punjab
for State-respondent.

SUVIR SEHGAL, J. (ORAL)

1. Instant petition has been filed under Section 439, Cr.P.C. seeking grant of post-arrest bail in:-

FIR No.	Dated	Police Station	Sections
0040	02.03.2023	GRP Ludhiana, District Govt. Rly. Police, Ludhiana	18 and 29 of the NDPS Act (Section 27 of the NDPS Act was added later on)

2. Version of the prosecution is that FIR, Annexure P-1, has been registered when on suspicion, 04 adults searched at one of the railway platforms of Ludhiana and were found to be carrying 01 Kg. *opium* each. The four individuals i.e. 02 males and 02 females identified themselves as Damodar Kumar Rana, Tiken Ganju @ Tiken Ganjhu (present petitioner), Chandu Devi and Ramiya Devi.

3. Counsel for the petitioner contends that separate recoveries have been made from all the 04 accused and the recovery individually made is non-commercial. He has placed reliance upon the judgment of the Supreme Court in **Amar Singh Ramjibhai Barot Versus State of Gujarat (2005) 7 SCC 550** as well as judgment dated 11.01.2021 passed by this Court in **CRM-M-33684-2020** titled as **Amit Dhanak Versus State of Haryana**. He has placed reliance upon order dated 25.08.2023 passed by this Court, Annexure P-2, preferred by co-accused, who is similarly placed, has been released on bail. He asserts that the petitioner, who has a clean past and is in custody since 06.03.2023, deserves to be enlarged on bail as the trial is likely to take time to conclude.

4. *Per contra*, State counsel, upon instructions received from SI, Birbal, has opposed the petition and has urged that in view of the rigor of Section 37 of the NDPS Act, petitioner cannot be released on bail. He has filed Custody Certificate dated 04.12.2023, which is taken on record. As per his instructions, charge has been framed on 29.05.2023, but out of 17 prosecution witnesses, none has been examined.

5. I have heard counsel for the parties and considered their respective submissions.

6. It has been held in **Amar Singh's case (supra)** that recovery effected from the accused cannot be clubbed till the time it is not established that there was some complicity or conspiracy between them. This aspect will be a subject matter of debate before the Trial Court. When considered individually, the recovery of prohibited substance effected from

the petitioner falls within the ambit of intermediate quantity as per the notification under the NDPS Act. Noticing the clean antecedents of the petitioner, the length of custody of more than nine months and the nascent stage of the trial, this Court has no hesitation in acceding to the prayer made in the petition.

7. Without adverting to the merits or de-merits of the arguments addressed, petition is allowed. Petitioner is ordered to be released on bail on furnishing bail/local solvent surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

8. It is clarified that any observation made hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

05.12.2023

Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No