

2024:PHHC:082103



IN THE HIGH COURT FOR THE STATES OF PUNJAB AND  
HARYANA AT CHANDIGARH

CRM-M-1654-2024 (O&M)  
Date of decision: 03.07.2024

Ajay Kumar @ Lucky

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Manjinder Singh Saini, Advocate  
for the petitioner.

Mr. A. S. Samra, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. This petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 136 dated 24.11.2022, registered under Sections 21 and 29 of the NDPS Act, 1985 and Section 25 of the Arms Act, 1959 at Police Station Chabbewal, District Hoshiarpur.
2. Learned counsel for the petitioner submits that as per allegations in the FIR, registered at the instance of SI Joginder Singh, it is stated that while he along with other police officials was on patrol duty, a person was seen coming from Sant Market side who was carrying a black color polythene in this right hand. On seeing the police party, he threw the said polythene bag on the ground and tried to run from the spot. However, he was apprehended by the police. On inquiry, he disclosed his name as

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Jaswinder Sindhu. Thereafter, on the basis of suspicion, he was apprehended and was given a notice under Section 50 of the NDPS Act with an option to be searched either before a Gazetted Officer or a Magistrate, on which, he reposed faith in the Investigating Officer and a consent memo was prepared. On search of the said polythene bag, recovery of 253 grams of heroin was effected, which falls under the commercial quantity. The petitioner was nominated on the basis of the disclosure made by co-accused Jaswinder Sidhu, who was arrested at the spot.

3. Learned counsel further submits that the petitioner is a first offender and he is not involved in any other case under the NDPS Act. Learned counsel further submits that after the recovery was effected, a *ruqa* was sent to the police station for registration of the FIR, therefore, it will be a matter of trial whether the provisions of Section 42 of the NDPS Act were complied with or not. No independent witness was joined by the police. The petitioner was nominated in this case on the disclosure of a co-accused Jaswinder Sidhu, who was arrested at the spot. Therefore, in view of the judgments rendered by Hon'ble Supreme Court in *Tofan Singh vs. State of Tamil Nadu, (2021) 4 SCC 1* and *State By (NCB) Bengaluru vs. Pallulabid Ahmad Arimutta & Anr. 2022 Live Law (SC) 69*, it will be a matter of trial whether disclosure of the co-accused is admissible against the petitioner or not? Co-accused Neeraj @ Neeraj Kumar, who was also nominated in this case on the basis of the disclosure statement, has been granted concession of anticipatory bail by this Court, vide order dated 06.02.2024 passed in *CRM-M-57005-2023*. The trial is likely to take time. The petitioner is in

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custody since long. No useful purpose would be served by keeping him in custody anymore. Hence, it is urged that the petition deserves to be allowed.

4. Learned State counsel, on instructions from the Investigating Officer, has not disputed the fact that the petitioner is a first offender and he is not involved in any other case. It is also not disputed that the petitioner has been nominated in this case on the basis of the disclosure made by the co-accused and no recovery was effected from him.

5. After hearing learned counsel for the parties, without making any comment on the merits of the case, considering the fact that the petitioner is not involved in any other case under the NDPS Act; he is in custody since long; conclusion of trial is likely to take time and also in view of the ratio of law as laid down by Hon'ble Supreme Court in aforesaid judgments, the present petition is allowed and the petitioner is ordered to be released on regular bail, subject to his furnishing personal/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

03.07.2024  
*Waseem Ansari*

(MANISHA BATRA)  
JUDGE

*Whether speaking/reasoned*

*Yes/No*

*Whether reportable*

*Yes/No*