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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-14768-2024(O&M)
Date of Decision: 09.05.2024

Harjit Singh @ Jeet Singh

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. J.S. Dhaliwal, Advocate, for the petitioner.

Mr. Adeshwar Singh Pannu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a second petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No.93 dated 23.07.2023, under Sections 22(c), 29/61/85 of NDPS Act, registered at Police Station Raman, District Bathinda, Punjab.

2. Today, a status report has been filed by the learned State counsel which is taken on record.

3. Learned counsel for the petitioner has submitted that the petitioner is in custody for 7 months and 25 days and investigation of the case has been completed and thereafter, challan has been presented. He submitted that the petitioner is not involved in any other case and has got clean antecedents and it is a case where the petitioner has been falsely implicated by the police. He submitted that the police had apprehended two persons namely, Manjot Singh @ Malli and Paramjit Kaur wife of Balraj Singh from a car from where there had been a recovery of 325 vials of

Codeine Phosphate having the weight of 122.90 grams and during interrogation on the basis of the disclosure statement made by the aforesaid co-accused, the name of the petitioner was nominated.

4. Learned counsel referred to para No.14 of the affidavit filed by the State today wherein it has been so stated that the petitioner is the cousin brother of the aforesaid co-accused and he had taken scrap items at Delhi and the co-accused had taken the intoxicant tablets and vials from the present petitioner at Talwandi Sabo through their car. It was on the basis of this disclosure statement of the co-accused that the name of the petitioner was nominated. He further submitted that it has also been stated in the affidavit that when the petitioner was apprehended, then from his canter there was recovery of cold drinks and no intoxicant substance was recovered from his canter and in the affidavit also, a reference has been made to various phone calls between the co-accused and the petitioner, whereas the petitioner is the cousin brother of the aforesaid co-accused as per the reply and therefore, no adverse inference could have been drawn with regard to the same in the present case. He submitted that considering the custody and the fact that the petitioner has clean antecedents and the fact that there was no recovery of any contraband from the petitioner, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner and therefore, he may be considered for the grant of regular bail. He also referred to a judgment of Hon'ble Supreme Court in ***Tofan Singh V/s. State of Tamil Nadu [2021 (1) RCR (Criminal) 1]*** to contend that the disclosure statement of a co-accused is not admissible in evidence.

5. On the other hand, Mr. Adeshwar Singh Pannu, learned AAG, Punjab has submitted that so far as the custody of the petitioner is

concerned, the same is correct and it is also correct that the petitioner is not involved in any other case and has got clean antecedents and no recovery of any contraband was effected from the present petitioner. He has however submitted that since on the basis of disclosure statement of a co-accused, the petitioner was also nominated and it was the petitioner who had supplied the aforesaid contraband which was recovered from the co-accused.

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

7. It is a case where the petitioner has already faced incarceration for 7 months and 25 days. Investigation of the case has been completed and challan has been presented, as per learned counsel for the parties. The petitioner is not involved in any other case and has got clean antecedents, as per learned counsel for the parties. The name of the petitioner has been nominated on the basis of the disclosure statement of a co-accused namely, Manjot Singh @ Malli. No recovery of any contraband has been effected from the present petitioner. It is a settled law that the disclosure statement of a co-accused and that too before a police officer is not admissible in evidence. A perusal of para No.14 of the affidavit would show that the disclosure statement was made before SI Gurinder Singh. Apart from the above, it is so stated that in the affidavit that the petitioner is the cousin brother of the other co-accused who was apprehended and therefore, no such reliance would have been placed upon the inter-se telephone calls. Therefore, this Court is of the considered view that the bar of Section 37 of the NDPS Act will not apply to the petitioner because there was no recovery from the petitioner and also it was only on the basis of disclosure statement and there is no material to connect the petitioner at this stage, apart from the disclosure statement.

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

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

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

09.05.2024

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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