



CRM-M-60361-2023 with
CRM-M-12476-2024

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-60361-2023
Date of Decision: 24.09.2024

Nishan Singh alias Shana Petitioner
Versus

State of Punjab Respondent

CRM-M-12476-2024

Gurdev Singh Petitioner

Versus

State of Punjab Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ruhani Chadha, Advocate,
for the petitioner in CRM-M-60361-2023.

Mr. Arshdeep Singh Brar, Advocate
for the petitioner in CRM-M-12476-2024.

Mr. Rajiv Verma, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

- Both the petitions have been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioners and are being taken up together for final disposal with the consent of the learned counsels for the parties, since they arise out of the same FIR bearing No.116 dated 08.08.2022, under Sections 22 of the NDPS Act (Sections 25 & 29 NDPS Act added later on), registered at Police Station Kot Isse Khan, District Moga.
- As per the FIR, when the police party was patrolling in a Government vehicle and were in search of bad and suspicious elements in a



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village, then an information was received by them through a secret informer with regard to one of the petitioners, namely, Nishan Singh @ Shana that he is coming with some intoxicant tablets and in case he is apprehended, the aforesaid intoxicant tablets can be recovered from him. Acting upon the aforesaid information as per the FIR, a report under Section 42 of the NDPS Act was sent to the Police Station Kot Isse Khan and FIR was registered under Section 22 of the NDPS Act.

3. Learned counsel appearing on behalf of the petitioner, namely, Nishan Singh @ Shana in CRM-M-60361-2023 submitted that the petitioner is in custody from 08.08.2022 which is more than 2 years and 1 month and qua him the charges were framed on 14.09.2023 and more than one year has elapsed but till date only one witness, who is the Investigating Officer, has been examined and none of the other material witnesses, who are stated to be recovery witnesses or a part of the police party have been examined till date. He further submitted that when the aforesaid witness i.e. I.O. had deposed before the Court then in his cross-examination he made totally inconsistent statement and rather stated that there was no report recorded under Section 42 of the NDPS Act. He submitted that the entire FIR was fabricated and concocted story in this regard and also submitted that a perusal of the FIR would show that on the basis of a secret information that the petitioner-Nishan Singh @ Shana is coming with some intoxicant tablets that FIR was registered under Section 22 of the NDPS Act. He further submitted that it is not understandable as to how the provisions of Section 22 of the NDPS Act have been invoked by filing the FIR even prior to any recovery being made and without even knowing as to what recovery could



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have been made and therefore, on the face of it, it is a fabricated FIR with a concocted story by the police to falsely implicate the petitioner. He further submitted that the petitioner is not involved in any other case under the NDPS Act but is involved in one case i.e. under Sections 341, 452, 427, 323, 148, 149, 120-B of the IPC and it was because of the personal rivalry with the opposite party of that FIR, the petitioner has been falsely implicated by the police in the present case. He submitted that even otherwise also, considering the long custody of the petitioner, he may be considered for grant of regular bail. He also submitted that so far as the alleged recovery from the petitioner which is stated to be 220 tablets of *Etizolam* carrying weight of 23.76 grams is concerned, although it falls in the category of commercial quantity under the NDPS Act but the bar contained under Section 37 of the NDPS will not apply to the petitioner in view of the aforesaid facts and circumstances where on the face of it, it is clear that the petitioner has been falsely implicated. He further submitted that even as per the recovery memo of intoxicant tablets which has been attached as Annexure P-2, it has been so stated that the aforesaid tablets were thrown by the petitioner on the ground and got scattered and therefore, even otherwise also there was no recovery from the conscious possession of the petitioner and on that ground as well, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner.

4. Learned counsel appearing on behalf of the petitioner-Gurdev Singh in CRM-M-12476-2024 submitted that he is in custody from 12.12.2023, which is more than 9 months and he was nominated on the basis of the disclosure statement of other petitioner, namely, Nishan Singh @



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Shana. He further submitted that the reason as to why the petitioner has been falsely implicated in the present case was that he was earlier involved in one case under the NDPS Act and one case under the POCSO Act and the aforesaid case of NDPS Act was also registered in the same police station i.e. Kot Isse Khan and there is no material available with the police to connect the petitioner with the present offence except for the disclosure statement of the aforesaid co-accused which is not admissible in evidence and also referred to a judgment of Hon'ble Supreme Court passed in “Tofan Singh Vs. State of Tamil Nadu”, 2021(4) SCC 1 in this regard. He submitted that in view of the aforesaid facts and circumstances, since even as per the police, no recovery was effected from the petitioner in the present case, the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner as well and therefore, he may be considered for grant of regular bail.

5. On the other hand, Mr. Rajiv Verma, learned Deputy Advocate General, Punjab on instructions from ASI Harjinder Singh submitted that so far as the custody of both the petitioners is concerned, the same is correct and it is also correct that qua the petitioner, namely, Nishan Singh @ Shana, the charges were framed on 14.09.2023 and the charges qua the petitioner-Gurdev Singh were framed on 15.02.2024. He has however submitted that it was on the basis of a secret information by the police, when they had laid down a *naka bandi* that the petitioner-Nishan Singh @ Shana was apprehended along with 220 tablets of *Etizolam*, which falls in the category of commercial quantity under the NDPS Act and therefore, the bar contained under Section 37 of the NDPS Act will apply in the present case.



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

7. It is a case where the custody of the petitioner, namely, Nishan Singh @ Shana is more than 2 years and 1 month and the custody of the petitioner, namely, Gurdev Singh is more than 9 months. A perusal of the FIR would show that it has been so recorded that a report under Section 42 of the NDPS Act was sent to the Police Station Kot Isse Khan whereas during the course of arguments the learned counsels for the petitioners, have referred to the cross-examination of the I.O., who is the only witness who has been examined till date, in which, he had given inconsistent statement and even he has so deposed before the trial Court by stating that the aforesaid report is not available in the judicial file. Apart from the above, a perusal of the FIR would further show that it is so stated that a secret information was received by the police with regard to the petitioner-Nishan Singh @ Shana and an FIR was registered under Section 22 of the NDPS Act after sending a report to the Police Station Kot Isse Khan. It is not understandable as to how the police came to know in advance as to what would be the nature of the salt of the tablets which were to be recovered from the petitioner-Nishan Singh @ Shana in future. The argument raised by the learned counsel for the petitioner-Nishan Singh @ Shana is that the petitioner has been falsely implicated by concocting story made in the FIR cannot be ruled out at this stage. This Court makes it very clear that the aforesaid observation is only for the purpose of considering the prayer of the petitioners for grant of regular bail and it cannot be in any circumstance, construed to have any bearing on the trial of the case. So far as the petitioner-Gurdev Singh is concerned, he was nominated on the basis of the



disclosure statement of the other petitioner, namely, Nishan Singh @ Shana and there is no recovery effected from the petitioner-Gurdev Singh. So far as the alleged recovery effected from the petitioner-Nishan Singh @ Shana is concerned, as per the FIR, it was effected from the ground and not from the conscious possession of the petitioner even though the allegations were that the petitioner-Nishan Singh @ Shana had thrown away the packets on the ground.

8. The charges qua the petitioner-Nishan Singh @ Shana were framed on 14.09.2023 and the charges qua the petitioner-Gurdev Singh were framed on 15.02.2024 and as per the learned counsel for the parties, only one witness i.e. I.O. has been examined but none of the witnesses, who are the recovery witnesses or the part of the police party has been examined till date. Even the I.O., who has been examined, as per the learned counsels for the petitioners has given an inconsistent statement before the trial Court in his cross-examination. The custody of the petitioner-Nishan Singh @ Shana from whom the recovery was effected is more than 2 years and 1 month and the custody of the petitioner-Gurdev Singh, who was nominated on the basis of the disclosure statement of the other petitioner-Nishan Singh @ Shana is more than 9 months and no recovery has been effected from him. Therefore, this Court is of the considered view that the bar contained under Section 37 of the NDPS Act will not apply to both the petitioners in the light of the aforesaid peculiar facts and circumstances of the present case.

9. In view of the aforesaid facts and circumstances, both the petitions are allowed and the petitioners, namely, Nishan Singh @ Shana and Gurdev Singh are ordered to be released on regular bail on furnishing

