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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-64101-2023
Date of decision: 18.03.2024

VARINDER SINGH ALIAS RICKY

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Saurav Bhatia, 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 the grant of regular bail to the petitioner in FIR No.147 dated 01.11.2022, under Section 21 of the NDPS Act (Section 29 of the NDPS Act added later on), registered at Police Station Navi Baradari, Jalandhar, District Jalandhar, Punjab.

2. Learned counsel for the petitioner submitted that although the present is a second successive bail petition filed by the petitioner and earlier bail petition was dismissed as withdrawn on 11.10.2023 and more than 5 months have elapsed but not even a single prosecution witness has been examined by the prosecution till date. He further submitted that the petitioner is in custody for 11 months and 3 days and the charges in the present case were framed by the learned trial Court on 14.07.2023, which is more than 8 months

but not even a single prosecution witness has been examined till date. He further submitted that it is a case where the name of the petitioner was nominated on the basis of disclosure statement of co-accused, namely, Lucky Kumar from whom there was a recovery of 97 grams of ice drug containing salt *methamphetamine* and the allegations against the petitioner were that he was instrumental in getting another contraband supplied from other co-accused, namely, Pardeep to the aforesaid Lucky Kumar while he was in jail and at that time, the petitioner was also in jail in some other case. He also submitted that neither any phone has been recovered from the petitioner nor there is any other material available with the prosecution to connect the petitioner with the present offence except for the disclosure statement of aforesaid co-accused, namely, Lucky Kumar, which is otherwise not admissible in evidence and referred to a judgment of the Hon'ble Supreme Court in *Tofan Singh versus State of Tamil Nadu, 2021 (4) SCC 1* to further substantiate his arguments. He further submitted that although the petitioner is involved in 4 more cases under the NDPS Act but he has since been acquitted in 2 cases and considering the aforesaid facts and circumstances of the present case especially the fact that there has been no recovery from the petitioner and his name was nominated on the basis of disclosure statement of aforesaid co-accused, he may be considered for the grant of regular bail.

3. On the other hand, Mr. Adeshwar Singh Pannu, AAG, Punjab submitted that it is correct that the petitioner is in custody for 11 months and 3 days and charges in the present case were framed by the learned trial Court on 14.07.2023 but no prosecution witness has been examined till date. He has however opposed the grant of regular bail to the petitioner on the ground that

although the recovery was not made from the petitioner but was made from the aforesaid co-accused falls in the category of commercial quantity, therefore the petitioner is not entitled for the concession of regular bail. He further submitted that the petitioner is a habitual offender and he is involved in 4 more cases under the NDPS Act besides some other FIRs under the other provisions of law, although he has been acquitted in 2 cases under the NDPS Act and at the time when the present FIR was registered, the petitioner was already in jail.

4. I have heard the learned counsel for the parties.

5. The petitioner is in custody for 11 months and 3 days. As per the learned counsel for the parties, challan was presented by the police on 28.04.2023 and thereafter, charges were framed by the learned trial Court on 14.07.2023 and more than 8 months have elapsed but not even a single prosecution witness has been examined till date. The name of the petitioner was nominated on the basis of disclosure statement of aforesaid co-accused, namely, Lucky Kumar. There has been no recovery from the petitioner and the petitioner was already in jail at the time when the present FIR was lodged. During the course of arguments, a specific query was raised to the learned State counsel as to whether there was any other material to connect the petitioner with the present offence apart from the disclosure statement of aforesaid co-accused, to which he could not give any such information. It is a settled law that the disclosure statement of a co-accused is *per se* not admissible in evidence and reference in this regard made by the learned counsel for the petitioner to the aforesaid judgment passed by the Hon'ble Supreme Court in **Tofan Singh's case (supra)** is well placed. The mere fact that the petitioner is involved in some more cases cannot itself become a ground for denial of regular bail to the

petitioner. Apart from the above, it is also not explained by the learned State counsel as to why more than 8 months have elapsed after the framing of the charges that not even a single prosecution witness has been examined till date. Admittedly, no recovery was effected from the petitioner but it was made from the aforesaid co-accused on whose disclosure statement the petitioner was nominated in the present case and therefore, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner.

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

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

18.03.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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