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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-64456-2023
Decided on: 16.04.2024

Sanjeev Kumar @ Sukar

.... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Manjot Kaur, Advocate
for the petitioner.

Mr. A.S. Pannu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

1. This is the third petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.26 dated 03.03.2020, under Sections 22 & 29 of the NDPS Act, Sections 61/1/14 of the Excise Act, Section 483 IPC and Section 207 of the Motor Vehicles Act, registered at Police Station Cheema, District Sangrur.

2. Learned counsel for the petitioner submitted that the petitioner is in custody for 3 years and 3 months and it is a case where as per the allegation, the police received an information pertaining to the other co-accused, namely, Ramzan Khan @ Bunty, Kulbir Singh and Gurjinder Singh @ Mithun that they are indulging in sale and purchase of some narcotics. She further submitted that the petitioner was not named in the FIR and his name was nominated thereafter purely on the basis of disclosure statement made by one of the co-accused, namely, Ramzan Khan @ Bunty. She also submitted that even during

investigation, nothing was found against the petitioner to link him with the present offence except for that of the disclosure statement of the co-accused which is not admissible in evidence especially in view of the law laid down by the Hon'ble Supreme Court in "*Tofan Singh Vs. State of Tamil Nadu*", **2021(4) SCC 1**. She also submitted that the allegation against the petitioner was that he supplied the contraband to the other co-accused. She further submitted that the reason as to why the petitioner was falsely implicated in the present case is that he was earlier involved in 2 more cases under the NDPS Act but he is already on bail in both the cases. She submitted that considering the aforesaid facts and circumstances of the case especially considering the custody of the petitioner, he may be considered for the grant of regular bail.

3. On the other hand, Mr. A.S. Pannu, learned AAG, Punjab, submitted that it is correct that the petitioner is in custody from 3 years and 3 months and further submitted that in the present case there had been a recovery of 6000 tablets of *Tramadol* and 240 bottles of country-made liquor from the other co-accused but the involvement of the petitioner was based on the disclosure statement of one of the co-accused, namely, Ramzan Khan @ Bunty and he rather had disclosed that the petitioner had taken Rs.20,000/- in view of the aforesaid contraband. He also submitted that since the petitioner is involved in 2 more cases under the NDPS Act, he does not deserve the concession of regular bail and so far as the recovery aspect from the petitioner is concerned, he also submitted that nothing was recovered from the petitioner.

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

5. It is a case where the petitioner has faced incarceration for 3 years and 3 months and this is the third successive bail petition filed by him and

earlier two petitions were withdrawn by him. The learned counsel for the petitioner has heavily relied upon the custody aspect and also that no recovery has been effected from the petitioner. It is not in dispute that the name of the petitioner surfaced on the basis of disclosure statement of the co-accused. During the course of the arguments, a specific query was raised to the learned State counsel as to whether there is any sufficient material available with the prosecution to connect the petitioner with the present offence except for the disclosure statement of the co-accused, he after taking specific instructions from police official, who is present in the Court today, stated that as per record there is no such other material available except for the disclosure statement. It is a settled law especially in the matters pertaining to the NDPS Act that the disclosure statement of a co-accused is *per se* not admissible in evidence. A reference can be made in this regard to the judgment of the Hon'ble Supreme Court passed in *Tofan Singh's case (supra)*. The mere fact that the petitioner is involved in some other case under the NDPS Act cannot become a ground for denial of bail to the petitioner especially when the custody is very long.

6. This Court after hearing the learned counsels for the parties and considering totality of the circumstances of the present case, is of the view that only on the basis of the custody, the petitioner deserves the concession of regular bail. Consequently, the present petition is allowed and the petitioner is ordered to be released on regular bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

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

of decision of present petition.

16.04.2024
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

1. Whether speaking/reasoned:
- Yes/No
2. Whether reportable:
- Yes/No