

***IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH***

Criminal Misc. No. M-35773 of 2016

Date of Decision:-19.10.2016

Harpal Singh alias Palla

...Petitioner

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Ashish Aggarwal, Advocate
for the petitioner.

Mr. Gurinderjit Singh, Deputy A.G., Punjab.

HARI PAL VERMA J.(Oral)

Prayer in this petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.43 dated 25.7.2015, under Sections 21/29/61/85 of the NDPS Act (Section 473 IPC added subsequently), registered at Police Station Sarai Amanat Khan, District Amritsar City.

Learned counsel for the petitioner states that it is the case of the prosecution that on 25.7.2015 the police party headed by Inspector Hardeep Singh was going towards Village Jhabhal. They noticed two persons riding on a motor-cycle, coming from the opposite side and on seeing the police party, they made an attempt to escape. However, they were apprehended by the police party. On conducting search of both of

them, 6 kilograms of heroin was got recovered from each of them, resulting into registration of the present FIR.

Learned counsel for the petitioner states that it is on the basis of disclosure statements of accused Rajbir Singh and Dilbagh Singh, the name of the petitioner has been figured in the case. He further states that the only charge framed against the petitioner is under Section 29 of the NDPS Act. He states that in view of Section 29 of the NDPS Act and taking into consideration Section 116 of the IPC, the petitioner cannot be sentenced for more than 5 years. The petitioner is in custody since 18.3.2016 and as against total 19 prosecution witnesses cited, the prosecution has not examined even a single witness so far.

Learned State counsel has filed the custody certificate and does not dispute the custody of the petitioner. However, he states that though there is another FIR No.47 dated 14.8.2015, under Sections 411, 414, 489ABCD IPC and Sections 15/18/21/22/61/85 of NDPS Act registered against the petitioner at Police Station Sarai Amanat Khan, but that is a general FIR in which the petitioner has already been admitted on bail.

I have heard learned counsel for the parties.

As per the allegations of the prosecution, the accused persons namely Rajbir Singh and Dilbagh Singh were apprehended by the police party at the spot and they were found in their possession 6 kilograms of heroin each and it is on the basis of their disclosure statements, the name of the petitioner has been surfaced in the case. As per Section 29 of the NDPS Act, the sentence is to be awarded in the light of Section 116 of the Indian

Penal Code. The petitioner was not arrested at the spot and he is in custody since 18.3.2016. The trial in the case is not going to be concluded in the near future as against the total 19 prosecution witnesses cited, not a single witness has been examined by the prosecution so far.

Therefore, without commenting on the merits of the case and taking into consideration the facts noticed above, this Court finds that the petitioner deserves the concession of regular bail.

Accordingly, the petition is **accepted**. The petitioner is admitted on regular bail on furnishing of his bail bonds and surety bonds subject to satisfaction of the Chief Judicial Magistrate/Duty Magistrate, Tarn Taran.

It is made clear that the observations made hereinabove shall not be construed as reflection of any opinion on the merits of the case and the trial Court shall decide the case on the basis of available evidence.

October 19, 2016
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No