

Crl. Misc. No. M-17417 of 2018

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-17417 of 2018

DATE OF DECISION:04.07.2018

Fredric

.....Petitioner

Versus

State of Punjab

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Dhruv Sihag, Advocate
for the petitioner.

Mr. Rahul Rathore, DAG, Punjab.

DAYA CHAUDHARY, J.

Petitioner-Fredric, who is residing in Delhi but is a resident of West Africa has filed the present petition under Section 439 Cr.P.C. for grant of regular bail in case FIR No. 9 dated 24.9.2017 registered under Sections 21/29/61/85 of NDPS Act and Section 14 of Foreigners Act, 1946 (added at the time of framing of charges) at Police Station STF Phase IV, Mohali.

Learned counsel for the petitioner contends that the petitioner has falsely been implicated in the case, whereas, he was not involved in the case. The petitioner has been arrested on the basis of disclosure statement made by co-accused Jagjeet Singh and recovery has been shown to be effected from him. Learned counsel further contends that as per case of the prosecution, 100 gms of heroin was recovered from the petitioner and as per the provisions of NDPS Act, the same falls under the category of non-

commercial quantity. The petitioner was arrested on 28.9.2017 and since then he is in custody. Challan has already been presented and no useful purpose would be served by keeping him in judicial custody. The petitioner had initially filed an application for grant of regular bail before the lower Court, which was dismissed by Special Judge (under NDPS Act), Mohali vide order dated 13.12.2017 on the ground that the petitioner had not surrendered his passport and there are chances that he may abscond. Thereafter he filed another application for grant of regular bail under the changed circumstances as the passport of the petitioner was taken by the police, which was also dismissed on 20.2.2018 on the ground that he is a foreign national and there is every likelihood that if he is released on bail, he may leave the country.

Learned counsel also contends that the passport of the petitioner is already in the custody of local police and he is ready to furnish the local surety as well. It is also the contention of learned counsel for the petitioner that the petitioner undertakes to appear before the trial court on each and every date and to abide by all the terms and conditions to be imposed by this Court or by the trial Court. Section 14 of the Foreigners Act was added while framing the charges in addition to Sections 21/29/61/85 of the NDPS Act but the same is not attracted in the present case. At the end, learned counsel for the petitioner contends that there are three accused in the present case including the petitioner, namely, Harpreet Singh @ Happy, Jagjeet Singh and they have already been granted concession of bail.

Learned counsel for respondent-State has opposed the submissions made by learned counsel for the petitioner on the ground that

the petitioner is resident of Africa and he may abscond from the country.

Heard the arguments advanced by learned counsel for the parties and have also gone through the contents of the FIR and other documents available on the file.

Admittedly, recovery effected from the petitioner is non-commercial in nature and he is in custody since 28.9.2017. It is also not disputed that the petitioner has been arrested on the basis of disclosure statement made by Jagjeet Singh and thereafter recovery has been effected from him. The first bail application filed by the petitioner was dismissed by the lower Court only on the ground that the petitioner had not surrendered his passport and there are chances of his fleeing from the Court proceedings. Thereafter passport of the petitioner was taken by the police authority and he filed another application under the changed circumstances, which was also dismissed on the ground that the petitioner is a foreign national and there is likelihood that he may abscond from the country. The petitioner has undertaken to furnish local surety to the satisfaction of the trial Court and is also ready to abide by all the terms and conditions to be imposed by this Court or by the trial Court. It has also been brought to the notice of this Court that the petitioner is not involved in any other case of NDPS Act. Co-accused of the petitioner, namely, Harpreet Singh @ Happy and Jagjeet Singh have approached this Court by way of filing Crl. Misc. No. M-48304 of 2017 and Crl. Misc. No. M-46241 of 2017, respectively and they have been released on regular bail on the ground that recovery effected from them is non-commercial in nature. The case of the petitioner is at par with co-accused, who have already been released on regular bail.

Under the similar circumstances, Delhi High Court in the case

of **Sartori Livio Vs. State (Delhi Admin.)** 2005 (2) RCR (Criminal) 479, the accused, who was also a foreign national filed a petition before High Court and he was ordered to be released on regular bail by relying upon the order passed in the case of **Nasimjon Komlov Vs. Customs** CRLM (M) no. 2038/2000 date of decision 31.7.2000, wherein, it has been held as under:-

“The learned counsel for the State opposed the grant of bail. He submitted that the petitioner is an Italian national and if he is released on bail, there is every likelihood that he may flee from justice. In fact, he pointed out to the order dated 04.11.2004 wherein this very fact has been noted. In support of this, the learned counsel for the petitioner placed a decision of a learned single judge of this court in the case of *Nasimjon Komlov v. Customs* in CRLM (M) No. 2038/2000 dated 31.07.2000. He referred to the following portion thereof:-

"Another argument that has been made by learned counsel for the Customs is that the petitioner is a foreigner and, therefore, should not be enlarged on bail. This argument must be heard and rejected. It would be a shame if courts are going to keep persons incarcerated merely because they are of foreign origin even though prima facie no case is made out against them. This would be a negation of the valued principles of rule of law and violative of the constitutional mandate and principles of human rights."

3. In view of this judgment, with which I am in agreement, it is clear that just because a foreign national is involved, it does not

mean that he is to be denied the benefit of bail. Keeping in view all the facts and circumstances of the case and after having heard the learned counsel for the parties, I direct that the petitioner be released on bail on furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount to the satisfaction of the concerned trial court. The petitioners passport shall remain in the custody of the I.O. concerned with the further condition that the petitioner shall not leave the National Capital Region without the prior permission of the concerned court.

The application stands disposed of.”

In the present case, the petitioner is resident of Africa and has undertaken to furnish the local surety to the satisfaction of the trial Court and also undertaken to attend the court proceedings as and when required.

In view of the above, the present petition is allowed. Petitioner-Frederic is directed to be released on regular bail subject to his furnishing local surety to the satisfaction of the trial Court. It is also directed that the petitioner shall surrender his passport before the investigating officer concerned with a further condition that the petitioner shall not leave the country without prior permission of the trial Court.

July 04, 2018
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes