

Crl. Misc. No. M-31927 of 2018

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-31927 of 2018

DATE OF DECISION:27.09.2018

Saibu Malik

.....Petitioner

Versus

State of Punjab

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Sanjay Malik, Advocate
for the petitioner.

Mr. C.L. Pawar, Senior DAG, Punjab.

DAYA CHAUDHARY, J.

The present petition under Section 439 Cr.P.C. has been filed by petitioner-Saibu Malik for grant of regular bail in case FIR No. 15 dated 30.4.2018 registered under Section 21/29/61/85 NDPS Act and Section 14 of Foreigners Act, Police Station, S.T.F., Phase-4, SAS Nagar, Mohali.

Learned counsel for the petitioner contends that the petitioner has falsely been implicated in the case and the alleged recovery effected is 250 gms of heroin including weight of polythene, which is non commercial quantity as per Section 2 (viia) of NDPS Act. As per allegations in the FIR, the petitioner along with one more person, namely, Chukwubike were intercepted on the basis of secret information when they were seen coming to Kumbra Chowk, Mohali from Chandigarh. They were arrested on the

spot and the alleged recovery of 250 gms of heroin including weight of the polythene was effected from the petitioner and co-accused-Chukwubike . Co-accused of the petitioner, namely, Chukwubike has already been released on regular bail by this Court by vide order dated 2.7.2018 passed in Crl. Misc. No. M-23810 of 2018. Learned counsel further contends that there is non-compliance of provisions of Section 50 of the NDPS Act. The petitioner was picked up from his house from New Delhi by the police but the alleged recovery has been shown to be effected from him, whereas, no recovery was effected from him. All witnesses are official witnesses and there is no possibility that the petitioner may influence them or tamper with the evidence. Trial may take long time to conclude and no purpose would be served by keeping the petitioner in custody.

Learned counsel for the respondent-State has not disputed the custody period as well as release of co-accused-Chukwubike on regular bail by this Court vide its order dated 2.7.2018 passed in Crl. Misc. No. M-23810 of 2018.

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, 250 gms of heroin, which is non-commercial has been shown to be effected from the petitioner. Co-accused-Chukwubike has already been released on regular bail by this Court vide its order dated 2.7.2018. There is no other case against the petitioner and nothing is to be recovered from him. The petitioner is also ready to furnish the local surety and to appear before the trial Court as and when required.

Accordingly, the present petition is allowed and petitioner-

Saibu Malik is directed to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court subject to the following conditions:-

- (i)that the petitioner will furnish local surety to the satisfaction of the trial Court;
- (ii)that he shall surrender his passport before the trial Court;
- (iii)that he shall not leave the country without prior permission of the trial Court;
- (iv)that he shall report to the concerned police station once in a month.

September 27, 2018
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No