

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

CRM-M-9715 of 2018

Date of Decision: 11.05.2018

Kolnis

....Petitioner

Versus

State of Haryana

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Manish Soni, Advocate
for the petitioner.

Mr. Tanuj Sharma, A.A.G., Haryana.

DAYA CHAUDHARY, J.

This petition has been filed under Section 439 Cr.P.C for grant of regular bail during trial to the petitioner-Kolnis in case FIR No.986 dated 03.09.2016 registered under Sections 20/21/61/85 of NDPS Act and Sections 489-B&C/120-B IPC and 4/12 of the Passport Act (added later on) at Police Station Sadar Gurugram.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case, whereas, he has no concern with the commission of offence and has not played any role. Learned counsel also submits that the case was registered against co-accused of the petitioner, namely, Uma Shankar for alleged recovery of 100 grams of *Ganja* and 25 grams of *Brown Sugar*, who allegedly stated to have disclosed the names of co-accused Seema and Jonah Marc, who have supplied the contraband. Said accused were arrested from their house and some contraband and

counterfeit currency notes were allegedly recovered from them. Learned counsel also submits that the petitioner has been implicated in the case only on the basis of disclosure statement of co-accused Jonah Marc, whereas, neither any kind of recovery was effected from the petitioner nor there was any connecting evidence. The petitioner is in custody since 19.09.2016. At the end, learned counsel for the petitioner submits that even no offence is made out under Section 489-B IPC and Sections 4/12 of the Passport Act as neither the petitioner was found using or in possession of counterfeit currency notes nor in possession of any kind of fake/forged passport. The case of the petitioner is at par with co-accused Seema, who has been released on bail. Even no independent witness was joined during investigation at the time of recording of disclosure statement.

Learned counsel for the respondent-State has opposed the submissions made by learned counsel for the petitioner. He submits that the petitioner is not entitled for bail keeping in view the seriousness of the offence. Learned counsel also submits that there was no parity with co-accused Seema.

Heard the arguments of learned counsel for the parties and have also perused the contents of FIR as well as other documents on the file.

Undisputedly, the name of the petitioner and his co-accused Seema has been mentioned on the basis of disclosure statement. Even by considering the allegations made in the disclosure statement, no offence is made out either under the provisions of Section 489-B IPC and Section 4/12 of the Passport Act as the petitioner was neither found using or in possession of counterfeit currency notes nor he was in possession of any fake/forged passport. The disclosure statement made by co-accused is

inadmissible in the eyes of law as it is hit by Section 27 of the Indian Evidence Act. Moreover, there is no connecting evidence with the alleged disclosure statement. Co-accused Seema has been released on regular bail by Additional Sessions Judge, Gurugram vide order dated 08.12.2016 and the case of the petitioner is at par with co-accused Seema.

It has been held by Hon'ble the Apex Court in case titled as ***Lohit Kaushal vs State of Haryana 2011(8) RCR (Criminal) 1234*** that a statement made to the police can only be used to the limited extent provided under Section 27 of the Evidence Act and that too only against the person making the statement. Moreover, the petitioner is in custody since 19.09.2016 and trial may take long time to conclude. No useful purpose would be served by keeping the petitioner in custody.

Accordingly, the present petition is allowed and the petitioner is directed to be released on regular bail on his furnishing bail/surety bonds to the satisfaction to the trial Court.

(DAYA CHAUDHARY)
JUDGE

11.05.2018
gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No