

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

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**CRM-M No. 36760 of 2019
Date of decision : 28.11.2019**

Rakesh Seth

.....Petitioner

Vs.

State of Punjab

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. J.S. Bedi, Senior Advocate with
Mr. S.S. Brar, Advocate, for the petitioner
Mr. Harbir Sandhu, AAG, Punjab

Rajbir Sehrawat, J. (Oral)

The present petition has been filed by the petitioner under Section 439 Cr.P.C for grant of bail pending trial in case FIR No. 6 dated 26.3.2018, registered under Sections 21, 25, 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act), Police Station SSOC, Amritsar.

It is contended by learned counsel for the petitioner that the case against the petitioner is totally concocted. Even the story of arresting the petitioner from Durgiana Mandir is factually incorrect. The petitioner has got a video recording showing that the police had visited the house of the petitioner at a different locations and in a police vehicle only, at about 2:00 O' Clock. Hence, the story of the prosecution have multiple holes. Still further, it is contended that even as per the story of the prosecution, no narcotic drug or psychotropic substance has been recovered from the petitioner. The only alleged recovery is of Rs.16.90 lakhs, which the police are trying to show as the drug money. However, this money is the legal money, of the petitioner.

The petitioner is a jeweller by profession. Therefore, it is not unnatural that the petitioner could be in possession of Rs.16.90 lakhs in cash. Besides the recovery of the said amount, the prosecution does not have any evidence or material to connect the petitioner to any consignment of the narcotic drug or psychotropic substance. In the name of the material, the police are relying upon only 2 phone calls with the co-accused Harvinder Singh. Even those 2 phone calls are after the time when the police had visited the house of the petitioner and before the petitioner is actually shown having been arrested. Therefore, possibility of the calls having been created by the police cannot be ruled out. Still further it is contended by the counsel that the petitioner is not having any other case against him. The police also do not have any material showing any prior connection of the petitioner with anyone of the alleged drug smugglers. The petitioner is in custody since 26.3.2018. After arrest of the 2 more accused, the trial has again started. Therefore, the trial is not likely to be concluded in near future. Hence, the petitioner deserves to be released on bail.

On the other hand, learned counsel for the State, being instructed by ASI Ghansham, submits that the petitioner is a part of a gang operating for smuggling of the contraband material from Pakistan. The petitioner constitutes the hawala and financial wing of that gang. During the investigation, the cash amount of Rs.16.90 lakhs have been recovered from the petitioner. The petitioner has even been found to be in contact with the other accused from whom 350 grams of heroin was recovered. However, it is not disputed that except the call on the same date, when the FIR was registered, there is no other material showing any communication between the petitioner and the co-

accused. It is also not disputed that except recovery of the money and the above said 2 calls, there is no other material, connecting the petitioner; either to the recovered contraband or to the alleged gang of smugglers.

In view the above, but without expressing any further opinion on the merits of the case, the present petition is allowed. The petitioner is ordered to be released on bail pending trial subject to his furnishing bail bonds/surety to the satisfaction of the Trial Court/Duty Magistrate, concerned.

(RAJBIR SEHRAWAT)
JUDGE

28.11.2019

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No