

221 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-38856-2019

Date of Decision : September 18, 2019

Mohd. Ashfak

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr.Gurpreet Singh Sandhu, Advocate
for the petitioner.

Mr. J.S. Ghumman, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.161 dated 16.7.2018 under Sections 22 of the NDPS Act, registered at Police Station Kotwali, District Bathinda.

Counsel for the petitioner relies upon the order dated 3.4.2019 granting regular bail to the co-accused Dalip in CRM-53107-2018. The operative part of the order reads as under :-

“Learned counsel for the petitioner submits that as per the allegations in the FIR, complainant/ASI Jaskaran Singh apprehended two persons, i.e. the petitioner and co-accused Mohd. Ashfaq, and after giving a notice, when the reposed confidence in ASI Jaskaran Singh, the search of the accused persons was conducted and recovery of 130 strips of Carisoprodol (Carisoma), each strip containing 10 tablets, was

effected from the petitioner, whereas from co-accused Mohd. Ashfaq, recovery of 130 vials of ONEREC 100-100 ML was effected.

Learned counsel for the petitioner further submits that the petitioner is a first offender and he is not involved in any other case and he is in custody since 18.07.2018 though the tablets, recovered from the petitioner, do not fall under the NPDS Act.

Learned State counsel, on instructions from HC Gurcharan Singh, has not disputed the fact that the tablets, recovered from the petitioner, do not fall under the NDPS Act, however, further submitted that recovery effected from co-accused Mohd. Ashfaq falls under the NDPS Act and since both the accused persons were found together, charges have been framed under the NDPS Act.

I have heard learned counsel for the parties. Without commenting upon the merits of the case, considering the aforesaid submissions made by learned counsel for the parties, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.”

Counsel for the petitioner submits that co-accused Dalip was, in fact, arrested at the spot and the recovery effected and, thereafter, the petitioner was arrested later on and he was nominated on the disclosure of Dalip. Counsel for the petitioner further submits that the complainant and the Investigating Officer are the same person and the petitioner is not involved in any other case and he is in custody for

the last more than one year and the conclusion of the appeal will take some time.

Learned State counsel, on instructions from ASI Jaswinder Singh and on the basis of the custody certificate, has not disputed the factual position. He further submits that out of 11 prosecution witnesses, only two have been examined so far.

Without commenting anything on the merits of the case, considering the fact that petitioner-Mohd. Ashfak has undergone a substantive sentence and is not involved in any other case; out of the 11 witnesses, til date, only 02 have been examined, the co-accused of the petitioner has already been granted the concession of regular bail; this petition is allowed and the petitioner is directed to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaqa Magistrate, concerned.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

September 18, 2019
satish

Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO