

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M- 34943 of 2018 (O&M)

Date of Decision:10.04.2019

Balwinder

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Bhupender Singh, Advocate
for the petitioner.

Mr. Vikas Malik, DAG, Haryana

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The present petition has been filed by the petitioner seeking bail pending trial in case FIR No. 450 dated 04.10.2016 registered under Section 21-C of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station City Tohana, District Fatehabad.

Learned counsel for the petitioner contends that the case against the petitioner is totally concocted. No such recovery, as alleged, was effected from the petitioner. Still further, it is submitted that the co-accused of the petitioner have already been released on bail by the trial Court and by this Court. However, the petitioner is languishing in jail for a long time. He further submits that the petitioner is in custody since 04.10.2016 and out of 16 witnesses, only six witnesses have been examined before the trial Court. It is further submitted that all the remaining witnesses are police officials only and they are not deliberately appearing before the Court just to delay the trial. Hence, the petitioner deserves to be released on bail, pending trial.

On the other hand, learned counsel for the State, on instructions from Pawan Kumar, ASI, submits that the trial is at the fag end and all the prosecution witnesses, except four persons, namely, ASI Jagmail, HC Rahul, PSI Sandeep and EHC Amardeep are left to be examined as prosecution witnesses. Still further, it is submitted that witnesses have been summoned for 01.05.2019 to depose before the trial Court. Accordingly, the prosecution shall complete its evidence and examine all the witnesses on 01.05.2019.

In view of above, this Court does not find it appropriate to interfere at this stage to release the petitioner on bail, pending trial.

However, the grievance of the petitioner, that he is being unnecessarily kept in jail, is found to have force. The petitioner is in custody for about 2-1/2 years and the prosecution is yet to complete its evidence, despite the fact that all the witnesses of the prosecution are only the police officials. Hence, to protect the right of the petitioner against his under incarceration and to ensure that trial is concluded at the earliest, it would not be unjustified if the prosecution is directed to complete its entire evidence when specified time frame however, by putting a caveat of coercive action against the prosecution.

Accordingly, the present petition is dismissed at this stage.

However, it is directed that the prosecution shall examine all the above said four prosecution witnesses, or any other prosecution witnesses, who is yet to be examined, on the date next fixed before the trial Court i.e. 01.05.2019. However, in any case, if any witnesses is left to

be examined on 1.05.2019, then the trial Court shall adjourn the case not beyond a period of one week; with a direction to the prosecution to examine all their left out witnesses on the adjourned date. However, it is further ordered that if on the said adjourned date, any witness of the prosecution, out of the persons mentioned above, or otherwise, is not produced before the trial Court, then the trial Court shall issue warrants of arrest against such witnesses. The Superintendent of Police, Fatehabad shall ensure that the warrant of arrest, so issued by the trial Court, are executed forthwith and all such witnesses are taken into custody. After being taken into custody, all the said witnesses shall be kept in protective custody in District Jail, Hisar till their examination and cross-examination before the trial Court is concluded.

April 10, 2019
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No