207

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No. 12959 of 2020 (O&M)
Date of Decision: 17.09.2020

Gagandeep Singh

-Petitioner

Vs

State of Punjab

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vipul Jindal, Advocate, for the petitioner.

Mr. R.P. Singh, D.A.G., Punjab.

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RAJ MOHAN SINGH, J. (ORAL)

The case has been taken up for hearing through video-conferencing.

Petitioner seeks grant of regular bail under Section 439 Cr.P.C. in case bearing FIR No.23 dated 31.01.2020 under Sections 21, 25, 27A and 29 of NDPS Act registered at Police Station STF, District S.A.S. Nagar, Mohali.

Learned counsel for the petitioner states that the petitioner has been nominated on the basis of disclosure statement of main accused Ankush Kapoor who has already been arrested.

As per allegations, 188 kg Heroine along with chemicals was recovered from a house which was taken by Ankush Kapoor on rent. In the disclosure statement of Ankush Kapoor, petitioner has been nominated on the ground that the petitioner was given an amount of Rs.10 lacs by some person from Australia and the said amount was drug money and was used in HAWALA.

On 16.02.2020, during investigation, main accused Ankush Kapoor made a confessional statement that in August, 2019, he had received a call from Tanvir Singh, resident of Australia that one of his person would visit Ankush Kapoor and would give an amount of Rs.10 lacs. Ankush Kapoor was told to hand over the said amount of Rs.10 lacs to Raja and Company Money Changer, whose owner is the petitioner. After receiving money from the said person, Ankush Kapoor handed over the same to the petitioner.

Allegations are of HAWALA transactions under the garb of business of money changer.

Learned counsel for the petitioner further submits that the petitioner is accused of the offence under Section 27-A of NDPS Act which is also a scheduled offence along with other offences in the FIR under Part-A of Prevention of Money Laundering Act, 2002. Section 27-A relates to financing illicit traffic and harbouring offenders.

With reference to Sections 3,4 and 71 of PMLA Act, learned counsel contends that in the very nature of allegations, provisions of Prevention of Money Laundering Act, 2002 have overriding effect over the other acts. Offences in question are scheduled offences under Part-A of the Act of 2002 and therefore, the complicity of the petitioner falls under PMLA Act for which Sections 44 and 45 of the Act would apply even though, the case has not been registered under PMLA Act. At the most, offence under the said Act could have been alleged against the petitioner.

Learned counsel further submits that offence under Section 45 of PMLA Act is *peri materia* with Section 37 of the NDPS Act. The twin conditions imposed under Section 45 of the Act came to be interpreted by the Hon'ble Apex Court in **Nikesh Tarachand Shah vs Union of India, AIR 2017 SC 5500.** The provision has been declared to be unconstitutional so far it imposes two further conditions to release on bail.

With reference to the report under Section 173 Cr.P.C., learned counsel submitted that no recovery has been effected from the petitioner.

Allegations are limited only to HAWALA transaction and do not suggest the knowledge of alleged HAWALA money being transected from drug paddling by the petitioner. No offence under NDPS Act is attracted. Offence under Section 27-A of NDPS Act is attracted only in the case of alleged financing with the knowledge of the same being with regard to Narcotic Drugs and Psychotropic Substances.

Allegations are silent in respect of alleged financing by the petitioner in terms of offence under Section 27-A of the Act.

Learned counsel for the petitioner further submits that other offences in terms of Sections 25 and 29 of the Act are also not attracted and the alleged disclosure made by main accused is inadmissible in law and would be subject to judicial scrutiny by the Court.

Per contra, learned State counsel states that the petitioner was nominated on the basis of disclosure statement of main accused Ankush Kapoor. No recovery has been effected from the petitioner. Challan has been presented, but charges have not been framed so far.

Petitioner was granted interim bail by this Court vide order dated 05.06.2020. Interim bail was extended by subsequent orders till date.

Co-accused namely Haneetpal Singh @ Hunny has been granted regular bail by the trial Court vide order dated 23.07.2020. Allegations against co-accused Haneetpal Singh @

Hunny are also the same. Ankush Kapoor after receiving an amount of Rs.1 crore from co-accused Baijaan had given Rs.75 lacs to Haneetpal Singh @ Hunny who is running business of Money Changer. Recovery has been effected from Haneetpal Singh @ Hunny. The case of the petitioner appears to be on better footing from that of Haneetpal Singh @ Hunny as no recovery has been effected from the petitioner.

The case appears to be debatable. Petitioner has not mis-used the concession of interim bail granted by this Court vide order dated 05.06.2020.

In view of above, order dated 05.06.2020 is made absolute and petitioner is directed to be released on regular bail, subject to his furnishing fresh heavy bail bonds/surety bonds to the satisfaction of trial Court/concerned Duty Magistrate.

Nothing expressed hereinabove would be construed to be an opinion on the merits of the case.

17.09.2020
Jyoti Sharma

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No