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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.37005 of 2020 (O&M)

Decided on: 18.11.2020

Sandeep

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Jagjeet Beniwal, Advocate
for the petitioner.

Mr. Deepak Kumar Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.62 dated 21.05.2017, for offence punishable under Sections 15, 61, 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') (Sections 27-A and 29 of the NDPS Act added later) registered at Police Station Behal, District Bhiwani.

Counsel for the petitioner has argued that the similarly situated co-accused of the petitioner namely Krishant has already been granted the concession of regular bail vide order dated 05.03.2020 passed in CRM-M No.8255 of 2020. The operative part of the said order, reads as under:-

“Learned counsel for the petitioner submits that after presentation of the challan, the trial could not proceed, as two more accused were arrested and supplementary challan qua them was presented on

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19.07.2019 and charges were framed on 21.10.2019 and as such, de-novo trial has started. It is further submitted that two co-accused Kanwar Sain and Hukmi Chand @ Madu have already been granted the concession of regular bail vide order dated 18.11.2019 passed in CRM-M-39216-2019 and CRM-M-39303-2019, wherein the following observations were made: -

“...Learned senior counsel for petitioner Kanwar Sain has argued that thereafter, the trial could not proceed, as two co-accused were arrested later on and supplementary challan qua them was presented on 19.07.2019; charges have been framed on 31.10.2019 and therefore, the de novo trial has started. Learned senior counsel has placed on record copy of the order dated 16.09.2019 passed by the Additional Sessions Judge, Bhiwani, to support his arguments that the case is again listed for recording the prosecution evidence. It is further argued that as per allegations in the FIR, which was registered on the basis of secret information that Krishan, his wife Roshni, son Jitender, niece Vikash, in conspiracy with her husband i.e. petitioner Kanwar Sain, who is in judicial custody, are indulged in the business of bringing poppy husk from Rajasthan and are coming in a mini truck with large quantity of the contraband. Upon this, the police swung in action and has recovered 1505 kgs chura post (poppy husk) from custody of the aforesaid persons. It is also argued that in fact, name of petitioner has surfaced on the basis of an information given by co-accused Krishan...”

Learned counsel for the petitioner further submits that the petitioner is in custody since 27.05.2017 and despite being in custody for a period of 02 years, 09

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months and 07 days, only 01 PW has been examined and thereafter, the trial has again started. In support of his arguments, learned counsel has relied upon the order dated 12.02.2020 passed by the trial Court.

Learned State counsel has, however, opposed the prayer for bail on the ground that when a raid was conducted on 21.05.2017 at premises of the petitioner, on the basis of a secret information, 79 boxes of poppy husk were recovered and in his disclosure statement, he named the other accused Kanwar Sain, Anil and Hukmi Chand and they were also arrested and later on, they have been released on regular bail. It is thus submitted that since the recovery from the petitioner is on higher side, his bail application may be dismissed.

Learned State counsel, on the basis of custody certificate dated 03.03.2020 filed in the Court today, has not disputed the fact that the petitioner is not involved in any other case under NDPS Act and is in custody for the last 02 years, 09 months and 07 days.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 02 years, 09 months and 07 days and his co-accused have already been released on regular bail, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned.”

Counsel for the petitioner has further submitted that the other accused have also been granted the concession of regular/anticipatory bail. It is also submitted that the petitioner was nominated in the case on the basis of the disclosure statement of Kanwar Singh and Rajesh, who have already been released on bail.

This fact is not disputed by counsel for the State. It is also

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not disputed that the petitioner is not involved in any other case.

Without commenting anything on merits of the case, considering the fact that the co-accused of the petitioner have already been granted the concession of regular/anticipatory bail; the petitioner is not involved in any other case; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time due to COVID-19 situation, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

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

18.11.2020

yakub

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No