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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-1207-2021

Date of Decision: 18.02.2021

Mussur @ Mushuraff

.. Petitioner

Vs.

State of Haryana

..Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Iqbal Singh Saggu, Advocate for the petitioner.

Kanwar Sanjiv Kumar, AAG, Haryana.

...

Manoj Bajaj, J. (Oral)

Petitioner has filed this petition under Section 439 Cr.P.C for grant of regular bail, pending trial in case FIR No.164 dated 12.10.2020 registered under Sections 21-B and 22-B NDPS Act, 1985 at Police Station Utawar, District Palwal. The petitioner is in custody since his arrest on 12.10.2020.

The FIR was registered on the basis of a secret information and the allegations noticed by the Addl. Sessions Judge, Palwal in the order dated 24.12.2020, while declining the bail application of petitioner, read as under:

“The brief facts of the prosecution case are that on 12.10.2020, a secret information was received that Mussa resident of village Utawar P.S. Utawar used to do the work of selling narcotic drug at his shop. On this information, SI Mohd. Idrish Khan along with other police officials reached the shop of the accused. The police party tried to make the public witness but the people present there showed their inability. A notice under Section 42 NDPS Act was served and Sh. Yashpal Khatana DSP was informed. Two boys were found at the shop out of whom one managed to escape while the other was apprehended at the spot who disclosed his name as

Mushuruf @ Mussar and he disclosed the name of another boy as Marruf. A notice under Section 50 NDPS act was served to accused and asked from him for searching his shop by the complainant or by gazetted officer upon which he replied to give his search of shop by gazetted officer and upon which ASI Mohd. Idrish called DSP City Palwal who reached the spot and after going through notice under Section 42 of NDPS Act ordered to search the shop of the accused. The drug controller did not reach the spot so all the drug was presented before the doctor. The accused failed to show any permit of licence. The samples were separated and the case property was sealed. On the basis of this, present FIR was registered against the accused.”

Learned counsel contends that the contraband was recovered from a shop and would fall within the non-commercial quantity, defined under the NDPS Act. In this regard, he has invited the attention of the Court to the observation of the Addl. Sessions Judge, Palwal made in the order, while declining the regular bail of the petitioner. He submits that even the conscious possession of the petitioner would be debatable, as he incidentally visited the shop, which actually belongs to his father-in-law. According to him, the investigation of the case is complete and, therefore, he prays for bail.

The prayer is opposed by the learned State counsel assisted by SI Ajrudin. He submits that the said shop has been taken on rent by the petitioner, however, it is not disputed by him that the investigation of the case is complete. He has further produced the custody certificate by way of affidavit of Dinesh Yadav, DSP, Deputy Superintendent of Prison, District Prison, Palwal, Haryana, which indicates that he is not involved in any other case of similar nature.

After hearing the learned counsel for the parties, this Court finds that the final report was filed before the trial Court on 09.12.2020, however, the trial is yet to commence. The petitioner is presently confined

in judicial custody after his arrest on 12.10.2020, therefore, further detention may not be necessary for any useful purpose, as the trial is likely to consume considerable time to conclude.

Resultantly, without meaning any expression of opinion on the merits of the case, it is ordered that the petitioner be released on regular bail in the above case, subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate Palwal.

The petition is allowed.

18.02.2021
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No