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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.2979 of 2020 (O&M)
Date of Decision: 22.02.2021

HARJIT SINGH ALIAS BADHU

.....Petitioner

Vs

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Amit Arora, Advocate
for the petitioner.

Mr. Amar Ashok Pathak, Addl. A.G., Punjab.

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.104 dated 09.07.2014, registered under Section 22 of the NDPS Act at Police Station Sarhali District Tarn Taran.

As per allegations 255 grams of intoxicating powder was recovered from the petitioner which on chemical analysis was found to be Pseudephedrine Hydrochloride.

Learned counsel for the petitioner submitted that

Pseudephedrine Hydrochloride is a controlled substance punishable under Section 25 of the NDPS Act and rigour of Section 37 of the Act would not apply in case of controlled substance. Petitioner is in custody since 03.08.2019 and he is not involved in any other case.

Per contra, learned State counsel submitted that Pseudephedrine Hydrochloride is a component of MDMA Ecstasy and 50 grams of the same would come under commercial category. Since recovery is of 255 grams of Pseudephedrine Hydrochloride, therefore, Section 37 of the NDPS Act would bar the grant of regular bail to the petitioner. Moreover the petitioner was declared as proclaimed offender vide order dated 05.04.2016 and thereafter he was arrested on 03.08.2019. The petitioner himself delayed the proceedings for more than three years and, therefore, he is not entitled for bail. Challan has already been submitted on 10.09.2015, however no prosecution witness has been examined so far due to COVID-19 pandemic.

In view of short reply filed by the respondent-State, this Court vide order dated 27.11.2020 adjourned the case for final report from the Narcotic Control Bureau which was awaited at the relevant time.

In compliance of the aforesaid, supplementary affidavit

of Mr. Kuljinder Singh, PPS, Deputy Superintendent of Police, Sub-Division Patti, District Tarn Taran has been filed along with report dated 09.12.2020 (Annexure R-1). Para 4 of the supplementary affidavit reads as under:-

“4. However pseudoephedrine is itself is a controlled substance under NDPS Act (Schedule-A of RCS Order 2013) 1985 which is widely used as precursor for the synthesis of ATS (excluding MDMA) and the same is regulated by Sec.9A r/w Sec 25A of the NDPS Act.”

Perusal of the aforesaid paragraph would show that *pseudoephedrine* is a controlled substance which is widely used as precursors for the synthesis of ATS (excluding MDMA) and the same is regulated by Section 9-A read with Section 25-A of the NDPS Act.

As per report attached with the aforesaid supplementary affidavit same proposition has been recited therein. Section 9-A of the NDPS Act deals with power to control and regulate controlled substance. Section 25-A of the Act provides for punishment for contravention of the orders made under Section 9-A of the Act. In case of the contravention of order made under Section 9-A of the Act, the accused shall be punished with rigorous imprisonment for a term which may extend to 10 years and shall also be liable to fine which may

extend to Rs.1 lakh provided that the Court may for the reasons to be recorded in the judgment impose a fine exceeding Rs.1 lakh under Section 37 of the NDPS Act.

The application of Section 37 of the Act in view of aforesaid facts and circumstances would remain debatable. Petitioner is in custody since 03.08.2019. No prosecution witness has been examined so far.

Looking to the aforesaid facts and in view of the situation arising out due to COVID-19 pandemic and without adverting to the merits of the case, I deem it appropriate to enlarge the petitioner on regular bail.

In view of above, petition is allowed. Petitioner is ordered to be released on bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.

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

(RAJ MOHAN SINGH)
JUDGE

February 22, 2021

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No