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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.12976 of 2021 (O&M)

Date of decision: 15.07.2021

Ajay Kumar @ Chottu

....Petitioner

Versus

Union of India

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Aman Pal, Advocate
for the petitioner.

Ms. Shweta Nahata, Advocate
for the respondent – UOI.

ARVIND SINGH SANGWAN J. (Oral)

CRM No.19419 of 2021

Prayer in this application is for preponing the date fixed in
the main petition.

Heard.

For the reasons stated in the application, the same is
allowed and the main case is taken up today for hearing.

CRM-M No.12976 of 2021 (O&M)

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 case Crime No.37/2020 dated 13.07.2020 registered
under Sections 8, 18, 29, 60 of the Narcotic Drugs and Psychotropic
Substances Act, 1985 (in short 'the NDPS Act') at Police Station
Narcotics Control Bureau, Chandigarh.

Despite taking 02 adjournments, no reply on behalf of the

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Narcotics Control Bureau, Chandigarh, has been filed.

Counsel for the petitioner has argued that as per the complaint filed by the Narcotics Control Bureau, Chandigarh, the petitioner – Ajay Kumar @ Chhotu, is arrayed as an accused No.3. It is further submitted that the allegations in the complaint are that on 12.07.2020, a secret information was received by Gurpreet Singh, Surveillance Assistant, which was reduced in writing and sent to the Superintendent, Narcotics Control Bureau, Chandigarh, for constituting a team to nab the accused persons. As per the information, 02 persons i.e. accused Nos.1 and 2 namely Arvinder Singh and Rahul, who were involved in illegal trafficking of Opium and it was further informed that they are coming, by taking the consignments from Jharkhand, to Ladwa in Haryana on the intervening night of 12/13.02.2020. Thereafter, in pursuance of the instructions given by the Superintendent, Narcotics Control Bureau, Chandigarh, a raiding team reached Ladwa and apprehended Arvinder Singh and Rahul and after following a procedure and joining a witness and giving a notice, conducted the search of their vehicle and from the said vehicle, 5.83 Kgs of Opium was recovered.

Counsel for the petitioner has further argued that it is the further case of the prosecution that during the investigation, the co-accused Rahul suffered a disclosure statement that they had brought the narcotics at the behest of the petitioner.

Counsel for the petitioner has also argued that thereafter, the petitioner was arrested, however, nothing incriminating was recovered from the petitioner except Credit Card, PAN Card, Registration Certificate, Passbook, etc. It is also submitted that even the

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house of the petitioner was searched but nothing was found. Lastly, it is argued that the petitioner is in custody since 13.07.2020 and he is not involved in any other case and, thus, prayed for grant of regular bail as till date no prosecution witness has been examined.

Counsel for the respondent – UOI, on the basis of the allegations in the complaint has argued that as a part of investigation, when the co-accused were interrogated, Rahul made a disclosure statement that the petitioner has given him money for bringing Opium as well as taxi fare and other expenses worth total of approximately Rs.3.05 lacs. It is also stated that the investigation was done in accordance with law, after following due process and thereafter, the petitioner was arrested, however, the raid was conducted at his house though, no narcotic was recovered but the other documents were received. It is further argued that the call details of the accused were taken and on the basis of the same, the petitioner was arrested.

Counsel for the respondent could not dispute that the petitioner is not involved in any other case and he is the first offender. Lastly, it is submitted that in view of the rigor of Section 37 of the NDPS Act, the bail should be rejected.

After hearing the counsel for the parties, I find merit in the present petition, for the following reasons:-

- (a) The petitioner was not named in the secret information;***
- (b) The petitioner was not present at the spot, when the co-accused were arrested and the recovery of narcotics was effected;***
- (c) The name of the petitioner surfaced, for the first time, in the disclosure statement of the co-accused***

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– Rahul and it will be a matter of trial, whether the said disclosure statement is admissible against the petitioner or not in view of “Tofan Singh vs State of Tamil Nadu”, 2013(4) RCR (Criminal) 631.

- (d) *It is not disputed that there is no other case against the petitioner and he is the first offender; and*
- (e) *Till date, no PW has been examined and the custody of the petitioner is approximately more than 01 year as on today and it will take some time in conclusion of the trial due to COVID-19 situation.*

Accordingly, 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/Illaqa 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

15.07.2021

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No