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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.18637 of 2021 (O&M)

Date of decision: 27.07.2021

Kailash Chander Dhakar @ Raju

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

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

Mr. Deepak 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.493 dated 17.12.2020, for offence punishable under Sections 15/27-A/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') registered at Police Station Sadar Fatehabad, District Fatehabad.

Counsel for the petitioner, at the very outset, has relied upon the order dated 16.03.2021 passed by this Court in CRM-M No.6533 of 2021, vide which the co-accused of the petitioner namely Sunil @ Kamal, was granted the concession of regular bail. The operative part of the said order, reads as under:-

“Learned counsel for the petitioner submits as per allegations in the FIR, the petitioner was apprehended by the police party on suspicion while travelling in a car and a recovery of 42 Kgs. of poppy straw was effected.

Learned counsel further submits that petitioner is a

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first offender; he is not involved in any other case and he is in judicial custody for the last about three months.

Learned State counsel has filed the custody certificate and has not disputed the factual position.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the fact that petitioner is in judicial custody for the last about three months and he is not involved in any other case and also in view of the fact that conclusion of trial is likely to take some time, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaq Magistrate, concerned.”

For the sake of brevity, the facts are not reproduced again.

Counsel for the petitioner has further submitted that when the police party stopped the car, on enquiry the co-accused Sunil Kumar @ Kamal was found to be the driver of the car whereas the another co-accused Sushil @ Kalu was the co-passenger. It is further submitted that from both the co-accused 42 Kgs and 200 gms of poppy husk was recovered. It is also submitted that on the disclosure statement of both the co-accused, the petitioner was nominated in the case as a person, who has supplied them the poppy straw. Counsel for the petitioner has also placed on record the order passed by the Rajasthan High Court, to submit that the petitioner has been granted the concession of regular bail in another FIR, which was registered earlier. It is also argued that the petitioner is in custody for the last 06 months.

Lastly, counsel for the petitioner has referred to the judgment passed by the Hon'ble Supreme Court in **“Tofan Singh vs**

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State of Tamil Nadu”, 2013(4) RCR (Criminal) 631, to submit that it will be a debatable issue whether the disclosure statement made by the co-accused will be admissible against the petitioner.

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 06 months; the co-accused of the petitioner is already released on bail; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time due to COVID-19 situation and also in view of the judgment passed by the Hon'ble Supreme Court in *“Tofan Singh's case (supra)”*, 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

27.07.2021

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No