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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.21710 of 2021 (O&M)

Date of decision: 16.07.2021

Sawan

....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)

CRM-19121-2021

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-21710-2021

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.444 dated 12.09.2019, for offence punishable
under Sections 21b/27-A/29/61/85 of the Narcotic Drugs and
Psychotropic Substances Act, 1985 (in short 'the NDPS Act') registered
at Police Station City Tohana, District Fatehabad.

Counsel for the petitioner has submitted that as per the
allegations in the FIR, the police party while on a patrol duty noticed

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that a person carrying a polythene bag in his hand was coming on foot from the opposite side and on seeing the police party, he threw the polythene bag on the street and tried to run away, however, he was apprehended by the police party at the spot on the basis of suspicion and thereafter, disclosed his name as Vikram @ Malla. On search of the said polythene bag 5.70 gms of Heroin was recovered. Thereafter, he made a disclosure statement that he has acquired the said polythene bag from the petitioner by paying Rs.7,000/-. Thereafter, the petitioner was nominated in the FIR and was later arrested and Section 27-A of the NDPS Act was added.

Counsel for the petitioner has further submitted that the petitioner was arrested on the basis of the disclosure statement of the co-accused and it will be a matter of trial whether the said disclosure statement is admissible against the petitioner or not.

Counsel for the petitioner has referred to the judgment passed by the Hon'ble Supreme Court in ***“Tofan Singh vs 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 as no recovery has been effected from the petitioner.

Counsel for the petitioner has also argued that the petitioner is involved in 03 cases, out of which 02 cases are under the Gambling Act, however, he is on bail in those cases and 01 case is under the NDPS Act, in which non-commercial quantity was effected. It is also submitted that the petitioner is in custody for the last 06 months and 16 days; challan stands presented, however, charges are yet to be

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framed.

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail. It is also not disputed that the charges are yet to be framed and recovery of the contraband was effected from the co-accused Vikram @ Malla, which was of non-commercial quantity.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 06 months and 16 days; 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 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/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

16.07.2021

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No