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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.30519 of 2021 (O&M)
Decided on: 23.11.2021

Naveen Kumar Sharma Alias Naveen Kumar

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Shobit Phutela, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this 2nd 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.222 dated 28.07.2020, for offence punishable under Sections 27-B(II) and 28 of the Drugs and Cosmetics Act, 1940, Section 22(c) of the NDPS Act, Sections 7 and 14A of the Foreigners Act, 1946, registered at Police Station Sector 56, Gurugram, District Gurugram.

Counsel for the petitioner has argued that as per the allegations in the FIR, registered at the instance of Inspector Amandeep Chauhan, on receiving a secret information that one Iraq national namely Aws Rad Neelmah Al-Hendi, is indulged in illegal drug trafficking. Thereafter, the police party reached at the given residence where the said person was found and disclosed that he has taken the flat on rent. Thereafter, the search of the flat was conducted and certain

recoveries of some intoxicant tablets and injections were effected. It is further stated that the recovery at Serial No.1 was of commercial quantity whereas the recovery at Serial no.2 was of small quantity. Later on, on the disclosure statement of the aforesaid co-accused, the name of one Deepak surfaced as a person from whom he has procured the same. It is also submitted that after the arrest of Deepak, again his disclosure was recorded and in the said disclosure statement of Deepak, the name of the petitioner surfaced.

Counsel for the petitioner has further argued that the petitioner is a first offender and he is not involved in any other case and except the disclosure statement of the co-accused Deepak, who himself was nominated in the case on the basis of the disclosure statement of the main accused, from whom the recovery was effected, there is no other evidence. Counsel for the petitioner has also submitted that even after the arrest of the petitioner, no narcotic substance was recovered from the petitioner. It is also argued that as on today, the petitioner is in custody for the last 01 year, 03 months and 11 days and till date, no PW has been examined so far.

Counsel for the petitioner has relied upon the judgment ***“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 or not.

Counsel for the State, on the basis of the Custody Certificate, has not disputed the factual position but opposed the prayer for bail, however, it is submitted that the petitioner was found running a

medical shop without any proper licence.

After hearing the counsel for the parties, without commenting anything on merits of the case, considering the fact that the petitioner is in long custody of 01 year, 03 months and 11 days; he is not involved in any other case; his name surfaced in the case on the basis of the disclosure statement of the co-accused Deepak, who himself was nominated on the basis of the disclosure statement of the main accused; the conclusion of the trial is likely to take some time as till date, no PW has been examined and also in view of the judgment of the Hon'ble Supreme 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

23.11.2021

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Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No