

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

105-2

**CRM-M-29587-2020
Date of Decision : 25.01.2021**

Mohammad Shadab @ Haji @ Naussad

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Dr. Anmol Rattan Singh, Sr. Advocate with
Mr. Pratham Sethi, Advocate
for the petitioner.

Mr. Ranvir Singh Arya, Addl. A.G., Haryana
for the respondent-State.

ARUN KUMAR TYAGI, J. (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.118 dated 11.05.2018 registered under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act") in Police Station Hansi Sadar, District Hansi to which Sections 21(b), 27A and 29 of the NDPS Act were added lateron.

As per the prosecution version, the police party headed by P/SI Balraj Singh on 11.05.2018 present in front of Toll, T-Point Hansi intercepted Innova bearing registration No.UP-32CR-7006 on the basis of secret information that four boys were coming from Delhi in the same who smuggle smack in the area of Hansi and Hisar. One of the persons namely Mohd. Afatab Khan was apprehended while the three others escaped. On search of vehicle as per prescribed procedure, one polythene bag containing 3.350 Kgs. of smack was allegedly recovered

from the same. During investigation co-accused Mohd. Afatab Khan made disclosure statement disclosing names of co-accused who escaped as Mohd. Mehtab Khan, Usuf Khan and Asif @ Sahban Ali and named the petitioner as the person from whom he and his co-accused had purchased the contraband. The petitioner was arrested in the case on 01.04.2020.

The petitioner being in custody has filed the present petition for grant of regular bail.

The petition has been opposed by the respondent-State in terms of reply filed by way of affidavit of Dharamvir, HPS, Deputy Superintendent of Police, Law and Order, Hansi.

I have heard learned Counsel for the petitioner and learned State Counsel and gone through the relevant record.

Learned Counsel for the petitioner has submitted that the petitioner was not arrested on the spot and no contraband was recovered from his possession. The petitioner has been falsely implicated in the case on the basis of disclosure statement of co-accused Mohd. Afatab Khan. There is no evidence against the petitioner as to indulging in financing or harbouring any offender or involvement in drug trafficking. The petitioner has been falsely involved in four other cases under the NDPS Act on the basis of alleged disclosure statements of co-accused. Disclosure statement of a co-accused does not constitute substantive evidence and can be used against other accused only as additional material to lend credence to other evidence sufficient to incriminate him as held in *Surinder Kumar*

Khanna Vs. Directorate of Revenue Intelligence : (2018) 8 SCC 271 and ***Criminal Appeal No.152 of 2013 titled as 'Toofan Singh Vs. State of Tamil Nadu' decided on 29.10.2020.*** There is no such evidence against the petitioner as to his involvement in the crime. The petitioner has been falsely involved in cases under the NDPS Act in the State of Haryana and the petitioner is not involved in any case under the NDPS Act in any other State. Co-accused Mohd. Afatab Khan, Mohd. Mehtab Khan and Asif @ Sahban Ali have been granted bail by the learned Additional Sessions Judge, Hisar. The trial is likely to take long time due to restrictions imposed to prevent the spread of Covid-19. No useful purpose will be served by further detention of the petitioner in custody. Therefore, the petitioner may be granted regular bail.

On the other hand, learned State Counsel has submitted that the petitioner is a habitual offender who is involved in drug trafficking. The case involves recovery of commercial quantity of contraband and rigors of Section 37(1)(b) of the NDPS Act are applicable. In view of the nature of accusation and gravity of the offences and his involvement in four other cases under the NDPS Act, the petitioner does not deserve grant of regular bail. Therefore, the petition may be dismissed.

In the present case, the petitioner was not apprehended on the spot and recovery of any narcotic drug or substance was not made from him. Recovery of 3.350 Kgs. of smack was made from possession of co-accused Mohd. Afatab Khan who named the present petitioner as the person from whom he and his co-accused Modh. Mehtab Khan,

Usuf Khan and Asif @ Shahban had purchased the contraband. The petitioner has been implicated in the present case only on the basis of disclosure statement of co-accused Mohd. Afatab Khan. The petitioner is involved in four other cases under the NDPS Act but in all other cases also the petitioner has been implicated on the basis of disclosure statements of co-accused and no recovery of any narcotic drug or psychotropic substance was made from him. There is a challenge to the evidentiary value of the disclosure statements in view of law laid down in *Surinder Kumar Khanna's case (supra)* and *Toofan Singh's case (supra)*. Concededly there is no other material such as call details record, tower location etc. of the co-accused and the petitioner to show his complicity in the crime and supply of the contraband by the petitioner to the co-accused. Prima facie Section 37(1)(b) of the NDPS Act is not applicable qua the petitioner as no recovery of narcotic drug or psychotropic substance was made from him. In any case in view of nature of evidence against the petitioner and the petitioner not being a previous convict there is reasonable ground to believe that he has not committed the alleged offences and that he is not likely to commit any offence under the NDPS Act in future.

In view of the above referred facts and circumstances of the case and also the fact that the trial is likely to take long time due to restrictions imposed to prevent the spread of Covid-19 and presence of the petitioner during trial can be secured otherwise also than only by detention in custody, but without commenting on merits of the case, I am inclined to extend the concession of regular bail to the petitioner.

In view of the above, the petition is allowed and the petitioner is ordered to be released on regular bail on furnishing of personal bond and bonds of two sureties in heavy amount to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

However, the petitioner is granted regular bail subject to the condition that he shall not commit any offence under the NDPS Act after his release on bail and in case of commission of any such offence by him after his release on bail, his bail in the present case shall also be liable to be cancelled on application to be filed by the prosecution in this regard.

25.01.2021

Vinay

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No