

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

105-4

CRM-M-29844-2020

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.598 dated 03.11.2018 under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act") registered in Police Station Hansi City, District Hansi to which Sections 27A and 29 of the NDPS Act were added lateron.

As per the prosecution version, on 03.11.2018 in the area of Tosham Octroi Post, Hansi the police party headed by ASI Mohan Lal apprehended co-accused Arvind and recovered 12 packets of plastic polythene containing smack weighing 1.25 Kgs. from his possession. During investigation co-accused Arvind made disclosure statement alleging that he had purchased the same from co-accused Mohammad Imran. In his disclosure statement co-accused Mohammad Imran named the present petitioner as the person from whom he had purchased the

contraband.

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

The petition has been opposed by learned State Counsel in terms of reply filed by way of affidavit of Vinod Shanker, HPS, Deputy Superintendent of Police, City 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. Imran. 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 Arvind and Mohd. Imran have been granted bail by learned Additional Sessions Judge, Hisar. The petitioner was declared proclaimed offender in breach of the prescribed procedure. The petitioner is already on bail in case registered against him under Section 174-A of the IPC. The petitioner is ready to comply with the terms and conditions to be imposed regarding his presence before the Court. 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. Initially the petitioner was declared proclaimed offender in the case and FIR under Section 174-A of the Indian Penal Code, 1860 has also been registered against him. In view of the nature of accusation, gravity of the offences, his involvement in four other cases under the NDPS Act and likelihood of the petitioner absconding, 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 commercial quantity of smack was made from

possession of co-accused Arvind who named co-accused Mohd. Imran. The petitioner has been implicated on the basis of disclosure statement of the co-accused Mohd. Imran. 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