

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

228

CRM-M No.45980 of 2021
Date of decision:08.11.2021

Vikas @ Lal Bahadur

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Radhe Shyam Sharma, Advocate for the petitioner.

Ms. Deepshikha Chauhan, AAG, Haryana.

SUVIR SEHGAL J. (ORAL)

This is the fourth petition filed by the petitioner under Section 439 of Cr.P.C. for grant of regular bail in case FIR No.26, dated 12.03.2020 registered for offence under Sections 21(b) and 27-A of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Bhattu Kalan, District Fatehabad, Haryana.

As per the case of the prosecution, FIR came to be registered when a car was intercepted and 30.45 grams of heroin was recovered from the pocket of accused Naveen Kumar. On enquiry the second occupant of the vehicle disclosed his name as Parmod Kumar @ Modi.

Counsel for the petitioner submits that the petitioner has neither been named in the FIR nor any recovery has been effected from him and he has arraigned as an accused on the basis of disclosure statement of both the co-accused. He submits that the allegation against the petitioner is that he had purchased 100 grams of heroin from Delhi and supplied 30 grams to co-accused Parmod and Naveen, who is his

brother. He urges that the first two petitions filed by the petitioner seeking grant of bail were withdrawn on 04.11.2020 and 10.08.2020 after arguments. He submits that the third petition filed by the petitioner (CRM-M-1803-2021) was withdrawn on 23.08.2021 with liberty to approach the trial court after the framing of the charge. It is his argument that the recovery effected from the co-accused is non-commercial and their confessional statements recorded in police custody are hit by Section 25 of the Evidence Act. He submits that the charge has now been framed on 17.09.2021 and the petitioner, who is in custody since 22.06.2020 deserves to be enlarged on bail.

Per contra, learned State counsel upon instructions from ASI Hardayal Singh, has opposed the petition on the ground that the petitioner is involved in 07 other criminal cases, out of which two cases are pending against him under the NDPS Act. Upon further instructions, she submits that out of the said 07 cases, the petitioner has been convicted in one case and has earned acquittal in another case though both the cases under the NDPS Act are pending trial. On further instructions, she submits that though no recovery of contraband was effected from the petitioner but a sum of Rs.2000/- was recovered from him, which he had received on sale of the heroin to the co-accused. She submits that after the framing of the charge, the prosecution evidence is yet to start and none out of 16 prosecution witnesses have been examined.

I have considered the respective submissions of the parties.

Keeping in view the facts and circumstances of the case, this Court is of the opinion that the disclosure statement of co-accused is a

weak type of evidence and its legality and veracity is yet to be tested, therefore, the petitioner, who is in custody for the last more than 01 year and 04 months deserves to be released on bail as neither any recovery has been effected from him nor is the trial likely to conclude in the near future.

Without commenting upon the merits or de-merits of the arguments addressed by the counsel for the parties, the petition is allowed. The petitioner is ordered to be released on bail on furnishing bail/heavy surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

While being released on bail, the petitioner shall furnish an undertaking that henceforth, he will desist from any criminal activity. In case, he violates the undertaking, it shall be open for the State to seek cancellation of the bail.

It is clarified that any observation made hereinabove shall not be construed to be an expression of opinion on the merits of the case.

08.11.2021

(SUVIR SEHGAL)
JUDGE

sheetal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No