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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.51535 of 2019 (O&M)

Date of decision: 06.08.2021

Udham Masih

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. H.S. Sandhu, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this 3rd 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.116 dated 18.07.2016, for offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') registered at Police Station Sultanpur Lodhi, District Kapurthala.

Counsel for the petitioner has submitted that as per the allegations in the FIR, registered at the instance of Inspector Harpreet Singh, when he along with his co-officials were present at a point and conducting the checking of the vehicles, a truck bearing registration No.RJ19-GA-1401, was stopped. The driver of the truck tried to run away but he was apprehended by the complainant. On information, the driver told his name as Sona Singh whereas the other persons sitting on the cleaner seat, told his name as Udham Masih. Thereafter, the Inspector gave a notice under Section 50 of the NDPS Act to the

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suspect, to be searched before the Magistrate or the Gazetted Officer and on recording their consent, Piara Singh, Deputy Superintendent of Police, Sultanpur Lodhi, was called at the spot. Thereafter, on search of the truck, 37 sacks of poppy husk weighing 34 Kgs 500 gms each were recovered. The total quantity of the said contraband was 1295 Kgs.

Counsel for the petitioner has further submitted that this is the 3rd petition and the new ground for filing this petition is that as on today, the petitioner is in custody for the last 05 years and 13 days and he has not been granted any remission or never availed the facility of parole.

Counsel for the petitioner has also submitted that one of the point to be decided during the course of trial, whether the petitioner, who was sitting on the conductor seat was having the knowledge about the concealment of the contraband in the truck or not and therefore, the trial Court is yet to decide whether the petitioner was in conscious possession of the same or not.

Counsel for the petitioner has further argued that all the 15 prosecution witnesses have been examined and now, the petitioner/accused to lead his defence evidence.

In reply, counsel for the State on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail. Counsel for the State, on the basis of the affidavit of the SHO, Police Station Sultanpur Lodhi, has also not disputed that the petitioner was arrested along with the co-accused, who was the driver of the truck.

Counsel for the State has also submitted that the entire prosecution evidence has been concluded and the case is now fixed for

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recording the statement under Section 313 Cr.P.C. and then, for defence evidence of the accused persons.

A perusal of the Custody Certificate, show that the petitioner is in custody for the last 05 years and 13 days and he is not involved in any other case.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 05 years and 13 days; the petitioner is not involved in any other case; the prosecution evidence has just concluded; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time as the accused persons have to lead defence evidence, 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/Illaqa 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

06.08.2021

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No