

218

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.4260 of 2021 (O&M)

Date of decision: 10.01.2022

Kapil

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. S.S. Gill, Advocate
for the petitioner.

Mr. Chetan Sharma, AAG, Haryana.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this 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.596 dated 05.11.2020, for offence punishable under Sections 18 and 29 of the of the Narcotic Drugs and Psychotropic Substances Act (in short 'the NDPS Act') registered at Police Station Sadar Thanesar, District Kurukshetra.

Counsel for the petitioner has submitted that as per the allegations in the FIR, registered at the instance of SI Daljeet Singh, while on patrol duty, he received a secret information that the co-accused Malkeet Singh and Mohan Singh are bringing Opium in truck bearing registration PB13-AL-5871. On receiving the said information, a notice was sent to the SHO for registration of the FIR. Later on, both the accused persons were apprehended and 07 Kgs of Opium was recovered from them. It is further submitted that during the custodial interrogation, the said 02 co-accused have suffered a disclosure

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statement that they have procured the Opium from the petitioner on payment of Rs.7.00 lacs and thereafter, the petitioner was nominated in the present case.

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 petitioner has further argued that as on today, the petitioner is in custody for a period of 01 year, 01 month and 25 days and he is not involved in any other case. It is also submitted that the petitioner is the only son and his mother is critically ill and needs urgent medical attention and has relied upon the medical certificate (Annexures P-2 to P-4). It is also argued that out of 19 PWs, only 02 PWs have been examined so far and again the trial will be delayed due to 3rd wave of COVID-19 as the trial Courts are again working on virtual mode and it will not be possible to record the statement of the witnesses and therefore, the petitioner be granted the concession of regular bail.

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail. It is also submitted that during the investigation, some amount was recovered from the petitioner, which is termed as drug money.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 01 year, 01 month and 25 days; the petitioner is not involved in any other case under the NDPS Act; the custodial interrogation of the petitioner is not

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required; the petitioner has been nominated in the case on the basis of the disclosure statement of the co-accused and in view of the judgment of the Hon'ble Supreme in *“Tofan Singh's case (supra)”* and the conclusion of the trial will take some time due to COVID-19 situation, 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

10.01.2022

yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No