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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.7307 of 2022 (O&M)

Date of decision: 20.12.2022

Umesh Rajput

....Petitioner

Versus

Narcotic Control Bureau

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Piyush Kant Jain, Advocate
for the petitioner.

Mr. Rajiv Sharma, Advocate
for the respondent.

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 Crime No.VIII/35/DZU/2020 dated 06.01.2021 under Sections 8, 18-C and 29 of the Narcotic Drugs and Psychotropic Substances Act (in short 'the NDPS Act') registered at Narcotics Control Bureau, District Panipat.

At the very outset, counsel for the petitioner has relied upon the order dated 13.12.2021 passed in CRM-M No.8789 of 2021 and CRM-M No.45603 of 2021, vide which 02 of the co-accused of the petitioner have been granted the concession of bail. The operative part of the order dated 13.12.2021, reads as under:-

“Counsel for the petitioners have argued that as per the allegations in the complaint filed by NCB, on 20.07.2020, a secret information was received that both the petitioner are carrying narcotic drugs and are coming through Sonapat Highway in car bearing registration

No.DL1R-TA-4239. Thereafter, by giving an information to the Intelligence Officer of NCB, a team was constituted and the car was intercepted on 21.07.2021 at 02:30 Hrs at Panipat Toll Plaza. On stopping the car, the driver of the car introduced himself as co-accused Umesh Rajput whereas the petitioner sitting on the co-driver seat of the car informed his name as Lalta Parsad and the person sitting on the rear seat of the car told his name as Rahul Maurya. Thereafter, a notice under Section 50 of the NDPS Act was served giving them option to be searched before the Gazetted Officer or the Magistrate, on which all the 03 accused gave their consent that they can be searched by the NCB Officer. Thereafter, the same team of the NCB searched the said vehicle and from the roof ceiling of the car, above the seat of the driver, 02 transparent polythene bags containing some black substance were recovered and the accused told that it is opium, which they are taking to District Kaithal. Thereafter, the said substance was checked which was found to be 04 Kgs and 02 samples were drawn and the remaining bulk sample was also sealed and on completing the formalities, notice were given to all the accused under Section 67 of the NDPS Act for recording their statements. In response to the notice, the petitioner Rahul Kumar stated that he is known to the other 02 accused and they are jointly bringing the opium in the car belonging to Umesh Rajput. Similar is the statement made by the petitioner – Lalta Parsad.

Counsel for the petitioners have further submitted that the petitioners were arrested on 21.07.2020 and their consent was taken that the search can be conducted by an NCB Officer, who was part of the team which has given the notice and therefore, it will be a debatable issue to be decided during the course of trial, whether Section 50 of the NDPS Act was properly complied with or not. It is also submitted that the complaint was filed after about 05 months i.e. on 06.01.2021, after completing the investigation, however, in the complaint nothing is stated about the source of acquiring the contraband by the accused persons.

Counsel for the petitioners have further argued that though, in the complaint, the details of the mobile phone taken from the concerned Nodal Officer is given, however, nothing is stated in the complaint that the petitioners prior to their start of journey were in touch, with each other.

Counsel for the petitioners have also submitted that in fact, both the petitioners have taken the car of co-accused Umesh Rajput on rent for the purpose of traveling as he belongs to the same village and they were not aware about the activities of the co-accused. It is further argued that the only evidence against the petitioners is their own disclosure statements, which in view of judgment of the

Hon'ble Supreme Court in “Tofan Singh vs State of Tamil Nadu”, 2013(4) RCR (Criminal) 631, is yet to be proved and to be seen by the trial Court, whether it is admissible in evidence or not. Lastly, it is submitted that both the petitioners are the first offenders and they are not involved in any other case.

Reply by way of affidavit of the Investigating Officer along with the Custody Certificate, is on record.

Counsel appearing for the respondent – NCB has argued that the fact that all the 03 accused belong to the same village show that they were jointly bringing opium and had knowledge about the same. It is further submitted that both the petitioners were named in the secret information by giving the car number, which was owned and driven by Umesh Rajput (though he was not named in the secret information). It is further submitted that a proper procedure has been followed while arresting the accused and conducting the search and then by giving a notice under Section 67 of the NDPS Act, their disclosure statement was recorded. It is also argued that during the investigation, it has come that Umesh Rajput (co-accused), was the owner and driver of the car and the contraband was recovered from the ceiling of the car above the head of the driver, which was driven by Umesh Rajput, however, it is not disputed on the basis of the Custody Certificate that both the petitioners are not involved in any other case.

A perusal of the Custody Certificate would show that the petitioner – Lalta Parsad as well as Rahul Kumar are in custody for the last 01 year, 04 months and 19 days.

At this stage, counsel for the petitioner has also submitted that the next date, fixed before the trial Court, is 04.01.2022 for recording the prosecution evidence, however, no PW has been examined so far as the trial was delayed due to COVID-19 situation.”

For the sake of brevity, the facts are not reproduced again.

Counsel for the petitioner has submitted that the petitioner was not named in the secret information whereas the aforesaid two co-accused were named in the secret information and during the investigation, the petitioner was arrested only because he was the driver and owner of the car. It is also submitted that the petitioner is not involved in any other case and he is in custody for the last 02 years and

05 months and out of 15 PWs, only 01 PW has been examined so far and it will take some time in conclusion of the trial.

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 02 years, 05 months; the co-accused of the petitioner are already released on bail; the petitioner is not involved in any other case; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time, 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

20.12.2022
yakub

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