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

CRM-M-7422-2022

Date of Decision: 07.03.2022

Bhagwan Singh @ Sonu

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Piyush Sharma, Advocate,
for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

The petitioner is seeking regular bail in FIR No.157, dated 25.09.2021, under Sections 21 and 23 of the NDPS Act, registered at Police Station Guruharsahai, District Ferozepur.

Learned counsel for the petitioner argues that in the present case, co-accused Gurdev Singh @ Baba, who is similarly situated as the petitioner, has already been extended the concession of regular bail by this Court, while passing order in CRM-M-4176-2022 on 07.02.2022, and therefore, on the ground of parity, the petitioner is also entitled for the same relief.

Learned State counsel, on instructions from SI Gurmit Singh, concedes the factum that the allegations alleged against the petitioner as well as his co-accused Gurdev Singh @ Baba, who has already been extended the concession of regular bail by this Court, are similar in nature.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

This Court, while examining prayer of the co-accused for grant of regular bail in CRM-M-4176-2022, passed the following order:-

“The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in FIR No. 157 dated 25.09.2021, registered under Sections 21, 23, 61, 85 of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Guru Harshai, District Ferozepur.

Learned counsel for the petitioner argues that the petitioner was arrested in connection with FIR No. 158 dated 25.09.2021 with the allegation that as per secret information received, he was involved in smuggling of the Heroin and on 25.09.2021 while he was searching for the contraband sent across from the International Border, he was apprehended though, no contraband was recovered from him, which is clear from the allegations alleged in FIR No. 158 dated 25.09.2021 but thereafter petitioner was involved in the present case being FIR No. 157 dated 25.09.2021 with the allegation that the BSF had recovered 2 kgs. of Heroin on 25.09.2021 found lying inside Indian Territory allegedly sent across from the International Border and on the basis of the disclosure statement of the petitioner in FIR No. 158 dated 25.09.2021 that he was in fact looking for the said contraband, when he was arrested in connection with FIR No. 158 dated 25.09.2021.

Learned counsel for the petitioner submits that no recovery of the contraband has been done from the possession of the petitioner rather, petitioner has been involved on the basis of the disclosure statement only, which carries no value as of now. Learned counsel for the petitioner further informs this Court that petitioner

has already been granted bail in FIR No. 158 dated 25.09.2021 and as no recovery has been effected from the petitioner in the present case also and the petitioner has been connected with the allegations alleged in the present FIR only on the basis of the confessional statement before the police and as the investigation is already over, he may kindly be granted the concession of regular bail.

Notice of motion.

Mr. Sandeep Singh Deol, learned Deputy Advocate General, Punjab, who has joined the proceedings through video conference, keeping in view the service of advance copy of petition, accepts notice on behalf of the respondent-State.

Learned State counsel submits that FIR No. 157 as well as FIR No. 158 dated 25.09.2021 were registered on the same day though, with different allegations. Learned State counsel submits that the petitioner was arrested on the basis of secret information while he was looking for a contraband for which FIR No. 158 dated 25.09.2021 was registered and it was upon disclosure statement of the petitioner before the police, he was related with the recovery of 2 kgs. of Heroin found lying inside Indian Territory though, from another area on the International Border, petitioner was nominated as accused and was arrested in FIR No. 157 dated 25.09.2021 as well. Learned State counsel submits that the actual recovery of the contraband has not been effected from the petitioner but he has been co-related with the recovery of 2 kgs. of Heroin found lying inside Indian Territory on International Border, which is part of the present FIR. Though on the basis of his disclosure/confessional statement before police.

I have heard learned counsel for the parties and

have gone through the record with their able assistance.

Once, no actual recovery has been effected from the petitioner, rigors of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 will not come into the present case. Rather, petitioner has been arrested after the recovery of a contraband in FIR No. 157 dated 25.09.2021 and the said contraband is being connected to the petitioner on the basis of his disclosure statement. No corroborating evidence to support the disclosure statement has been brought to the notice of this Court as of now and as the trial is likely to take some time before the same concludes, no justifiable purpose will be achieved in keeping the petitioner behind the bars during the entire period of trial as the petitioner has undertaken before this Court that he will not influence the trial or the witnesses in any manner, the petitioner has made out a case for the grant of regular bail.

The petitioner is directed to be released on regular bail in this case subject to the satisfaction of the trial Court/Duty Magistrate concerned.

However, it is made clear that anything observed herein shall not be construed to be an expression of any opinion on the merits of the case.”

Keeping in view the above, once no differentiating fact has been pointed out between the petitioner and the said co-accused Gurdev Singh @ Baba, who has already been granted the concession of regular bail, the same relief cannot be denied to the petitioner, on the ground of parity.

In view of the above and without commenting upon the merits of the case, it is directed that the petitioner be released on regular bail, subject to the satisfaction of the trial Court/Duty Magistrate concerned.

However, it is made clear that anything observed herein shall not be construed to be an expression of any opinion on the merits of the case.

07.03.2022
Apurva

(HARSIMRAN SINGH SETHI)
JUDGE

1. Whether speaking/reasoned : Yes
2. Whether reportable : No