

S.No.204

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

CRM-M-9295 of 2022

Date of Decision:13.05.2022

Hari Shankar @ Hari Parkash

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM:- HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Arun Sharma, Advocate for the petitioner.

Mr. Ashish Yadav, Addl. AG, Haryana.

VINOD S. BHARDWAJ, J. (Oral)

This is the first petition filed under Section 439 Cr.P.C for grant of regular bail to the petitioner in case FIR No.298 dated 17.05.2018 registered under Section 408 IPC (lateron added Sections 467, 468, 470, 471, 34 IPC) at Police Station Samalkha, District Panipat.

The case of the prosecution is based on the statement of the complainant Kamal Kumar, Excise Manager, Kapoor Industries Ltd., Panipat recorded on 16.05.2018 wherein he submitted that on 22.03.2018, two containers having 712 cartons and 800 cartons were loaded on a trailer bearing registration No.HR 38-S-9469 being driven by Mustkin Ansari and another trailer bearing registration No.HR 38-T-3269 driven by Ajay Singh alias Dinesh. Both the said vehicles started from Dadri at 11:11 PM and 11:14 PM respectively. The containers contained cartons of towels and bath mats at the invoice price of Rs.1.03 crores approximately. The said containers were to be exported to Caprice Australia PTY Ltd., and e-mail was received on 16.05.2018 by the complainant's company from Caprice Australia PTY Ltd., wherein it was informed that bags of sand were recovered from the container instead of towels and bath mats and, it thus, transpired that original consignment had been taken out and that the

bags of sand were filled up in the container, thus resulting in registration of FIR against the driver of trailer taking the container bearing No.TGHU-6383470-40, namely, Ajay Singh alias Dinesh. The cost of the said consignment was Rs.52.30 lakhs approxpiately.

Learned counsel appearing on behalf of the petitioner contends that the petitioner has not been attributed any role at all in the said incident. There is no entrustment of any goods to the petitioner and he was not even the driver or owner of the offending vehicle. Furthermore, he submits that the investigation of the case is complete and that the petitioner has been in custody since 08.10.2021. It is also argued that the petitioner does not suffer any criminal antecedents and is not involved in another case. He points out that the trial shall take long time as only 04 out of 21 witnesses have been examined so far.

Per contra, learned counsel on behalf of the State, has argued that the petitioner in connivance with Ajay Singh alias Dinesh sold the consignment of complainant's company and that a sum of Rs.2 lakhs fell to his share and a sum of Rs.5,000/- has been recovered from him.

The submissions of counsel for the State are controverted by learned counsel for the petitioner to contend that there is no averment of linking the petitioner to the co-accused Ajay Singh alias Dinesh and that there is also no allegation substantiating that the petitioner was in any manner aware that the consignment was stolen. He, thus, submits that the petitioner cannot be directed any liability on account of independent act committed by the co-accused.

I have heard learned counsel for the parties and have gone

through the documents appended along with the case.

It is not the case of the respondent- State that the petitioner had in any manner removed the loaded towels and bath mats. The only allegation is that he facilitated the sale of the said consignment. It is also seen that the petitioner does not suffer from any criminal antecedents and he has been in custody since 08.10.2021 and has already undergone 07 months of actual custody. The trial is still at the initial stage as only 04 witnesses out of 21 have been examined so far. Taking into consideration the aforementioned facts, the nature of allegations as well as the fact that the petitioner was not named in the FIR and was not even entrusted with any of the consignments, and additionally, he was not the owner or driver of the offending vehicle carrying the container, I deem it appropriate to enlarge the petitioner on bail.

Accordingly, the present petition is allowed and the petitioner is admitted on regular bail subject to his furnishing bail bonds/ surety bonds to the satisfaction of Trial Court/ Duty Magistrate concerned.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observations made hereinabove shall not be construed as an expression on the merits of the case and the Trial Court shall decide the case on the basis of available material.

May 13, 2022
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(VINOD S. BHARDWAJ)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No