

CRM-M-11669-2022

Date of Decision: 22.08.2022

Varinder Singh @ Vicky

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Kuldeep V. Singh Ahluwalia, Advocate,
for the petitioner.

Mr. Inderpreet Singh Kang, A.A.G., Punjab.

HARSIMRAN SINGH SETHI, J. (ORAL)

The present petition has been filed under Section 439 of the Cr.P.C. for grant of regular bail to the petitioner in FIR No. 0003, dated 03.01.2021, under Section 15 of the NDPS Act, 1985, registered at Police Station Haryana, District Hoshiarpur.

Learned counsel for the petitioner argues that in the present case though the petitioner was arrested from the spot of recovery but no evidence has come on record so far to connect the petitioner with regard to the contraband which was recovered as no drugs were recovered from the possession of the petitioner.

Learned counsel submits that only the confessional statements given before the police are being relied upon to rope the petitioner with the alleged crime which is clear from the '*challan*' and no independent evidence or witness has come on record so far to corroborate allegations against the petitioner.

Learned counsel submits that the only allegation against the petitioner is of transferring the bags containing the contraband from a canter which was being occupied by co-accused Swaranjit Singh alias Bitta as driver and another co-accused namely, Bahadur Singh, who was sitting at the back of the canter, to the car in question which was parked near the canter whereas, in fact the petitioner was only standing near the aforementioned vehicles and no contraband was recovered from his possession.

Learned counsel further submits that the petitioner is 20 years old and has no other criminal case registered against him and therefore as the trial is likely to take some time before it conclude, the petitioner be given the concession of regular bail.

The learned State counsel after relying upon the affidavit filed by Sh. Surinderpal Singh, PPS, Deputy Superintendent of Police, District Hoshiarpur, submits that the patrolling party led by DSP Prem Singh saw some persons transferring cardboard boxes from a Canter bearing No. PB-10-FV-7121 to one Swift car No. DL-3C-AZ-3031 and upon getting suspicious the police party approached them and they tried to run away.

Learned counsel for the respondent-State further submits that the allegation alleged against the petitioner was that he was standing near the vehicles concerned helping the transfer of the cardboard boxes but no actual recovery has been done from the petitioner whereas, co-accused Swaranjit Singh was found sitting in the driver seat and co-accused Bahadur Singh was found sitting in the back of the Canter and as per the allegations, 100 kgs of poppy husk was recovered from the Swift car and 400 kgs of the poppy husk was recovered from the Canter.

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

In the present case, the recovery of the contraband which has been done by the investigating agency is from the car, as well as the Canter, description of which has been given hereinbefore. It is a conceded position that the petitioner was in neither of the vehicles.

No material has been brought by the learned State counsel to the notice of this court that any part of the contraband was recovered from the petitioner's possession who was allegedly standing next to the vehicles concerned from where the contraband was recovered and as of now, the allegations are only based upon the confessional statements of the petitioner and the other co-accused which is clear as per the '*challan*', which allegations are also yet to be proved during the trial.

Though, the culpability or innocence of the petitioner will be proved on the basis of the total evidence which will come on record during the trial, however, keeping in view the fact that as of now, except the confessional statement of the accused, there is nothing on record to tie the petitioner with the recovery of the contraband and that the petitioner has no other criminal case registered against him and concededly, no recovery of any contraband has been done from the possession of the petitioner, hence, restrictions imposed by Section 37 of the NDPS Act, 1985, will not come in the way of the petitioner so as to seek regular bail.

Keeping in view the facts and circumstances, the petitioner has made out a case for the grant of regular bail especially when learned counsel for the petitioner has given undertaking before this court that if the

concession of regular bail is extended, the petitioner will not interfere with the trial or the witness in any manner, hence, as the trial is likely to take some time before it concludes, no useful purpose will be achieved in keeping the petitioner behind the bars during the entire period of the trial as the petitioner is behind bars for the last more than one and a half year already.

In view of the above, the petition is allowed and 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 stated herein shall not be construed to be an expression of any opinion on the merits of the case.

August 22, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No