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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.16174 of 2022 (O&M)

Date of decision: 26.04.2022

Sazid @ Bhoora

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Abhimanyu Singh, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, 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.341 dated 12.05.2020, registered under Sections 25, 29, 20 and 27(a) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') (Sections 25, 29, 27(a) of the NDPS Act added later) at Police Station Bhiwani Sadar, District Bhiwani.

Counsel for the petitioner has relied upon the order dated 23.03.2022 passed in CRM-M No.11546 of 2022 vide which the co-accused of the petitioner namely Kundan Singh, has been granted the concession of regular bail. The operative part of the said order, reads as under:-

“Counsel for the petitioner has submitted that the FIR was registered at the instance of ASI Pankaj Kumar with the allegations that while on petrol duty, he received a secret information that the co-accused Jaipal son of

Arjun is indulged in selling the intoxicant substance and he can be apprehended along with heavy quantity of intoxicant materials. Thereafter, a ruqa/notice under Section 42 of the NDPS Act was sent to the Police Station for registration of the case and a raiding party apprehended a person coming on a motorcycle, who disclosed his name as Jaipal. Thereafter, a notice under Section 50 of the NDPS Act was given to him and the Deputy Superintendent of Police, Headquarter was called at the spot and by following the procedure, 02 bags carrying 25 Kgs and 28 Kgs of Charas were recovered.

*Counsel for the petitioner has also submitted that after the arrest of Jaipal, the co-accused Bijender was nominated in this case with the allegation that Jaipal and Bijender have brought the contraband in an Alto Car from Kerana, Uttar Pradesh and he can get the same demarcated. It was also stated in his disclosure statement that he has purchased the same from Bijender @ Rs.20,000/- per Kg. Thereafter, the police arrested Bijender and he also made a disclosure statement of committing the offence with Jaipal. In his disclosure statement, it is further stated that he has procured the same from one Bhoora son of Shahdeen, who is a big supplier of narcotics in Kerana, Uttar Pradesh and the Alto Car used by both the aforesaid accused was also recovered. Thereafter, Bhoora son of Shahdeen was arrested and he also recorded a disclosure statement that he has friendship with the present petitioner Kundan, who is resident of village Nainital, Uttarakhand and Bijender used to come in his shop in a car and used to take intoxicant substance. It is further stated that the petitioner was also indulged in the business of selling of intoxicant substance. Counsel for the petitioner has also submitted that the petitioner is a first offender and he is not involved in any other case and was nominated on the successive 3rd disclosure statement and therefore, it will be a debatable issue whether the disclosure statement made by the co-accused will be admissible against the petitioner or not in view of the judgment of the Hon'ble Supreme Court **"Tofan Singh vs State of Tamil Nadu", 2013(4) RCR (Criminal) 631,***

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position that in a sequence of the disclosure statement recorded by Jaipal, Bijender was nominated and again on the disclosure

statement of Bijender, Bhoora was nominated and thereafter, on the disclosure statement of Bhoora, the present petitioner – Kundan was nominated in the case.

*After hearing the counsel for the parties, without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 04 months and 23 days; the petitioner is not involved in any other case; the custodial interrogation of the petitioner is not required; the conclusion of the trial will take some time due to COVID-19 situation; 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)**, 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.”*

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

Counsel for the petitioner has argued that the name of the petitioner surfaced in the disclosure statement of Kundan Singh as well as co-accused Bijender Singh. It is also submitted that in pursuance to the disclosure statement, when the petitioner was arrested, no recovery was effected from him and therefore, it will be matter of trial whether the disclosure statement of the co-accused is admissible against the petitioner or not as it was not followed by any recovery.

Counsel for the petitioner has further submitted that challan stands presented, charges have been framed, however, the prosecution evidence is yet to start and the petitioner is not involved in any other case of similar nature and he is in custody for the last 05 months and 26 days.

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 05 months and 26 days; the co-accused of the petitioner is already released on bail; the custodial interrogation of the petitioner is not required and also in view of the fact that in the chain of disclosure statements, the name of the co-accused Kundan, who has already been granted bail as well as the petitioner surfaced and the fact that the bail of Bijender, who transported the narcotic substance has already been dismissed and the fact that 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/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

26.04.2022
yakub

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