

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-16231-2022 (O & M)
Date of decision: 26.04.2022

Mukesh Kumar @ Vekuli Yadav

..... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Aman Pal, Advocate, for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition is for the grant of regular bail under Section 439 Cr.P.C. in a case bearing FIR No.313 dated 29.05.2021 under Sections 18 of the NDPS Act (Section 29 NDPS Act added later on) registered with Police Station Shahbad Markanda, District Kurukshetra.

The brief facts of the prosecution case are that the investigating agency received secret information that two persons namely Irshad son of Mojiv and Ashfaq son of Islam were indulging in the sale of opium and were taking intoxicating substance in huge quantity from Karnal to Ambala, and if a barricading was done, the said two persons could be arrested and huge quantity of intoxicating substance could be recovered. Based on the aforementioned information, the investigating agency proceeded to the spot and a truck bearing registration No.OD-16E-7172 was seen coming from

Shahabd to Pipli, which was signalled to stop. Then accused, namely,

Mohammad Irshad was on the driver-side and the person sitting on the cleaner side was Mohammad Ashfaq. After the completion of the formalities, a recovery of 5Kgs. of opium was effected from them.

The learned counsel for the petitioner contends that the petitioner was not named in the FIR. In fact, the accused named one Ajay as a supplier of the opium alongwith other persons. Subsequently, Mohammad Ashfaq, the arrested accused, also took the name of the petitioner in a disclosure statement stating therein that the co-accused, namely, Ajay had told him that it was the petitioner, who grew opium and would sell the same.

Subsequently, Ajay was arrested and he has also named the petitioner in a disclosure statement.

The learned counsel for the petitioner, thus, submits that except the disclosure statement of the co-accused, there is absolutely no evidence whatsoever against the petitioner. He has placed reliance on various judgments passed in the cases of '*Tofan Singh versus State of Tamil Nadu, 2020 AIR (Supreme Court) 5592*', '*Rakesh Kumar Singla versus Union of India 2021 (1) RCR (Criminal) 704*'; '*Surinder Kumar Khanna versus Intelligence Officer Directorate of Revenue Intelligence, 2018(3) RCR (Criminal) 954*'; '*State by (NCB) Bengaluru versus Pallulabid Ahmad Arimutta & Anr. 2022(1) RCR (Criminal) 762*' and '*Sanjeev Chandra Agarwal & Anr. Versus Union of India 2021(4) RCR (Criminal) 590*' to contend that statements made in police custody were inadmissible in evidence. He, thus, prays for the concession of regular bail for the petitioner.

The learned State counsel, on the other hand, has submitted that the petitioner is one of the main suppliers. As per the various disclosure statements of the co-accused, the petitioner has sold 8 Killo 500 Grams opium to his co-accused Ajay Ram and after retaining 3 Killo 500 Grams Ajay Ram sold the remaining 5 Killo opium to his co-accused Mohammad Ashfaq, the accused arrested at the spot. He, however, admitted that other than the disclosure statements of his co-accused and that of his own, there is no evidence against the petitioner. He has also contended that the petitioner is involved in another case bearing FIR No.150 dated 29.05.2021 under Section 18(b) of the NDPS Act (Section 29 NDPS Act added later on) registered with Police Station Cheeka, District Kaithal. He, thus, contended that the petitioner did not deserve the concession of regular bail.

I have heard the learned counsel for both the parties at length.

Admittedly, no recovery whatsoever has been effected from the petitioner. The evidentiary value of the various statements made in police custody would be adjudicated upon during the course of the trial. In FIR No.150 dated 29.05.2021, the petitioner has been granted the concession of regular bail by this Court vide order dated April 06, 2022 (Annexure P-7) . Even otherwise, the petitioner is in custody since 15.06.2021 and the investigation having been completed, further incarceration of the petitioner is not required.

Thus, keeping in view the aforementioned facts as also the fact that the trial is not likely to be concluded in the near future, no useful purpose would be served by keeping the petitioner in custody.

Accordingly, without going into the merits of the case, the present petition is allowed and the petitioner-Mukesh Kumar @ Vekuli Yadav son of Krishan Yadav is ordered to be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the concerned Trial Court/Duty Magistrate.

(I) The petitioner shall mark his presence on the Ist Monday of every month at Police Station Shahbad Markanda, District Kurukshetra, till the conclusion of the trial;

(II) The petitioner shall furnish an affidavit each time when he appears before the aforesaid police station that he is not involved in any other case other than the present case.

(JASJIT SINGH BEDI)
JUDGE

April 26, 2022
sukhpreet

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