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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.16667 of 2022 (O&M)

Date of decision: 28.04.2022

Chedan Pal @ Sahu Pal

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. G.S. Dhindsa, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

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.28 dated 12.02.2020, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') at Police Station Anaj Mandi, District Patiala.

Counsel for the petitioner, at the very outset, has relied upon the order dated 15.12.2021, passed in CRM-M Nos.16564 and 29890 of 2020, vide which 02 of the co-accused of the petitioner namely Salinder Singh @ Shinda and Jagjeet Singh @ Jagi, were granted the concession of regular bail, by passing the following order:-

“Learned counsel for the petitioners submit that as per allegations in the FIR, registered at the instance of ASI Gurdeep Singh, while on patrol duty, he received a telephonic information that one car bearing registration No.PB-13-AD-9311 is coming, in which there are three occupants and they are carrying intoxicant substance. On

this, he sent a ruqa to the police station. The aforesaid car was stopped by the police party, which was Maruti Ritz white coloured. The driver disclosed his name as Jagjeet Singh @ Jagi, the person sitting on the co-driver seat disclosed his name as Salinder Singh @ Shinda and third person sitting on the backseat told his name as Shedanpal @ Sadhu Pal. Upon suspicion, a notice was given to them informing their right to be searched before a Magistrate or a Gazetted Officer. On this, all the accused stated that they have faith on the Investigating Officer and he can conduct the search. Thereafter, 10000 intoxicant tablets were recovered from the bag lying on the back seat of the car and 5000 intoxicant tablets from the bag lying in the feet of co-passenger seat.

Learned counsel has argued that it will be a matter of trial whether Section 50 of NDPS Act has been properly followed or not, as no Gazetted Officer or a Magistrate was called at the spot and despite the fact that ASI Gurdeep Singh, who sent ruqa to the police station, continued to conduct the further investigation, as notice under Section 50 of NDPS Act was served by him and later on, under his instructions, ASI Jaspal Singh conducted the search, therefore, it is the same Investigating Officer, who conducted the entire investigation. It is further submitted that third accused Shedanpal @ Sadhu Pal is resident of Bihar and do not know how to write or read Punjabi language and his consent was also taken on a memo, which was prepared in Punjabi. It is also submitted that during the investigation, nothing has come on record that the petitioners had any meeting of mind with aforesaid Shedanpal @ Sadhu Pal, as no scientific investigation is conducted, to find out that prior to travelling together, they were talking to each other on their mobile phones, therefore, presence of Shedanpal @ Sadhu Pal is doubtful.

Learned counsel has next argued that even certain documents, which were prepared at the spot like recovery memo, site plan etc., are typed documents, which bear the complete detail of the FIR and only the FIR number has been written later on by inscribing with a pen and this also makes the prosecution version doubtful. It is last argued that both the petitioners are first offenders; they are in custody for the last about 01 year and 10 months; charges have been framed and out of total 21 prosecution witnesses, none has been examined so far, therefore, it will take long time in conclusion of the trial.

Learned State counsel, on the basis of custody certificate dated 15.12.2021 filed in the Court today, has not disputed the factual position. It is not disputed that the petitioners are not involved in any other case under NDPS Act and they are in custody for the last 01 year, 09 months and 27 days. It is also not disputed that till date, no prosecution witness has been examined.

Without commenting anything on merits of the case and considering the aforesaid submissions made by learned counsel for the parties, both these petitions are allowed and petitioners Salinder Singh @ Shinda and Jagjeet Singh @ Jagi are directed to be released on regular bail subject to furnishing their bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned.”

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

Counsel for the petitioner has argued that the petitioner was sitting in the car and the recovery was effected from the co-accused. It is also submitted that the petitioner is in long custody for the last 02 years, 02 months and 07 days and the conclusion of the trial will

take some time. Lastly, it is argued that out of 27 PWs, none has been examined till date.

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 02 years, 02 months and 07 days; the co-accused of the petitioner are already released on bail; the custodial interrogation of the petitioner is not required and the 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/Illaqa 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

28.04.2022

yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No