

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

204

CRM-M-43632-2022

Date of Decision :30.11.2022

Sukhbir

...Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. S.K. Verma, Advocate for the petitioner.

Mr. Rajesh Gaur, Addl. A.G. Haryana.

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Harsimran Singh Sethi, J. (Oral)

The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in respect of FIR No.0178 dated 11.07.2020 registered under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'NDPS Act') at Police Station Badhra, District Charkhi Dadri.

Learned counsel for the petitioner submits that in the present FIR, there are two accused and the co-accused of the petitioner namely, Bir Singh has already been extended concession of regular bail by the trial Court itself and the petitioner is behind the bars for the last 02 years and 04 months. Learned counsel for the petitioner further submits that the factum whether the contraband which was recovered belongs to the petitioner or the co-accused is yet to be proved during the course of trial and the trial is likely to take some time before it concludes, hence, the petitioner be granted

concession of regular bail especially, when the petitioner was the only bread earner of his family, which consists of three children, who have no other source of income as of now.

Learned State counsel on the other hand submits that though, it is a conceded position that there are two accused in the present FIR and the co-accused Bir Singh has already been extended concession of regular bail by the trial Court but it has already come on record that contraband was recovered from the petitioner and keeping in view the bar envisaged in Section 37 of the NDPS Act, the petitioner is not entitled for the grant of benefit of regular bail only on the ground that the petitioner has undergone custody for 02 years and 04 months especially, when the co-accused Bir Singh is not similarly situated to the petitioner.

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

From the FIR, it is clear that the petitioner was pillion rider on the motorcycle driven by co-accused Bir Singh. It has also come in the FIR that the bag containing contraband was in the possession of the petitioner when recovered by the police which fact is also part of the disclosure statement of the petitioner. Further, same fact has already been noticed by the trial Court while granting bail to the co-accused Bir Singh wherein, it has been mentioned that co-accused Bir Singh was only driving the motorcycle and the contraband was recovered from the petitioner. That being so, as per the allegation, the possession of the contraband when recovered was with the petitioner though, the said allegation is yet to be proved keeping in view the evidence, which will come on record during the

course of trial. Hence, once the allegations against the petitioner are with regard to the recovery of contraband of commercial quantity, the bar envisaged under Section 37 of the NDPS Act needs to be crossed before the petitioner can be extended concession of regular bail. Nothing has been placed before this Court to show that the allegations are prima facie false. Rather it has been conceded before this Court that there are disclosure statements not only of the petitioner but of the co-accused Bir Singh admitting the possession of the contraband recovered with the petitioner.

Another argument which has been raised by the learned counsel for the petitioner is that the petitioner has already undergone custody for a period of 02 years and 04 months and as the trial is likely to take some time before it concludes, the petitioner may kindly be extended concession of regular bail. The custody undergone alone is not good enough to grant the benefit of regular bail to the petitioner ignoring the provisions of Section 37 of the NDPS Act.

Further argument raised by the learned counsel for the petitioner is that the family of the petitioner is facing financial distress as petitioner was the only bread earner, who is behind the bars for the last two and a half years. The said emotional argument cannot be pressed into for the grant of regular bail, keeping in view the strict provisions of the NDPS Act.

Last argument raised by the learned counsel for the petitioner is that once the co-accused Bir Singh has been granted concession of regular bail by the trial Court, the petitioner be also extended the said benefit. For analyzing the said argument, facts of the present case are to be seen whether the petitioner and the co-accused are similarly situated or not. While

granting bail to the co-accused, it has already come on record that nothing has been recovered from the co-accused as he was only driving the motorcycle whereas, the contraband has been recovered from the petitioner. That being so, the petitioner cannot claim parity with the co-accused as of now.

Keeping in view the above, no ground is made out to grant the benefit of regular bail to the petitioner at this stage.

Dismissed.

However, it is made clear that anything observed herein shall not be construed to be an expression of any opinion on the merits of the case as the innocence or guilt of the petitioner will be adjudged on the basis of the evidence which will come on record during the course of trial.

November 30, 2022

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(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No