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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.50029 of 2022 (O&M)

Date of decision: 07.12.2022

Sambhu Bahuia @ Shambhu Bahia

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. L.S. Sekhon, Advocate
for the petitioner.

Mr. Shubham Kaushik, 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.78 dated 16.05.2021, for offence punishable under Sections 18-C and 29 of the Narcotic Drugs and Psychotropic Substances Act (in short 'the NDPS Act') registered at Police Station Sangat, District Bathinda.

Counsel for the petitioner has relied upon the order dated 30.03.2022 passed in CRM-M No.5701 of 2022, vide which the co-accused of the petitioner namely Ravinder Bahuia has been released on bail. The operative part of the said order, reads as under:-

“Counsel for the petitioner has submitted that as per the allegations in the FIR, registered at the instance of ASI Darshan Singh, it is stated that while on petrol duty for checking the suspicious person, the police crossed the Railway crossing and noticed that 03 persons were sitting under a tree. On seeing the police party, they tried to run away, however, on suspicion, they were apprehended and

disclosed their names as Ravinder Bahuia i.e. the petitioner, Shambhu Bahuiya and Sanjay Kumar. Thereafter, an information was sent to the Police Station and ASI Major Singh was deputed at the spot and after giving a notice under Section 50 of the NDPS Act regarding a bag which was lying nearby, the recovery of 05 Kgs of Opium was recovered in the presence of a Gazetted Officer.

Counsel for the petitioner has further submitted that the petitioner and 02 other accused are residents of Jharkhand and the entire proceedings i.e. the notice under Section 50 of the NDPS Act, consent memo, non-consent memo, were recorded in Punjabi language and thumb-impressions of the petitioner as well as other accused were taken on the same.

Counsel for the petitioner with reference to these documents submits that there is no reference that the same were read-over to the petitioner and his companions to record their consent after they have understood the contents of the same. It is also submitted that the petitioner is in custody for the last about 10 months and 12 days, he is a first offender and is not involved in any other case and out of 10 PWs, only 01 PW has been examined.

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail.”

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

Counsel for the petitioner has argued that though while granting bail to co-accused Ravinder Bahuia, one fact was considered that he was suffering from Tuberculosis, however, the present petitioner is in custody for the last 01 year, 06 months and 19 days and out of 10 PWs, only 03 PWs have been examined and the petitioner is not involved in any other case. It is further submitted that the petitioner is not acquainted with Punjabi language and all the proceedings are in the same language, on which thumb-impressions of the petitioner and other accused were taken and it will be a matter of trial whether the consent

memo and non-consent memo or notice under Section 50, was read over to them or not.

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 01 year, 06 months and 19 days; the co-accused of the petitioner is already released on bail; the petitioner is not involved in any other case; the custodial interrogation of the petitioner is not required; out of 10 PWs, only 03 PWs have been examined so far 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

07.12.2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No