

CRM-M- 3967-2023 (O&M)
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M- 3967-2023 (O&M)
Date of Decision: 01.06. 2023

Nitin Chhabra

... Petitioner

V/s.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

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Present : Mr. Kamaldip Singh Sidhu, Advocate
for the petitioner.
Mr. Digvijay Nagpal, AAG, Punjab.

DEEPAK MANCHANDA, J.(Oral)

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Petitioner has prayed for grant of regular bail under Section 439 Cr.P.C. in case FIR No. 96 dated 26.04.2022, under Sections 22 and 25 and later on added Sections 22-C and 29 of NDPS Act registered at Police Station Jamalpur, District Ludhiana, who is alleged to have supplied 18100 intoxicant tablets and 14100 intoxicant tablets to the co-accused, which falls under the ambit of commercial quantity.

Learned counsel for the petitioner contends that the petitioner is in custody since 24.08.2022 and has been falsely implicated in the present case on the basis of disclosure statement of co-accused Sahil Jindal and Kuldeep Sharma. It is

submitted that neither the petitioner has been named in the FIR nor any recovery has been effected from the conscious possession of the petitioner. It is also submitted that the timing of the *ruqa scribe* and the details of recovery memo are also contradictory, which is in violation of section 42(2) NDPS Act, 1985.

Learned counsel for the petitioner argued that the present FIR was registered on the secret information where secret information was received that one Tushar Gautam and Sushil Makkar are involved in the business of selling intoxicants and same was being supplied to other co-accused namely Kuldeep Sharma and Sahil Jindal. Learned counsel further argues that alleged recovery of contraband was effected from the co-accused Tushar Gautam and Sushil Makkar vide consent memos and recovery memo dt.26/4/2022 (Annexure P-3 to P-5) from the room where raid was conducted and not from the petitioner. Learned counsel submits that disclosure statements recorded during interrogation are not admissible and there is no incriminating evidence to link the petitioner with the commission of alleged offence. Further, while contending that though the recovery is commercial yet it has not been effected from the petitioner and the challan stands presented though charges are yet to be framed and the conclusion of trial will take sufficient time, therefore, prayer is made for the petitioner to be enlarged on bail.

Custody certificate has been filed by the respondent-State, which is taken on record. Even though learned counsel appearing on behalf of respondent-State, on instructions from the Investigating Officer, opposes the grant of regular bail

to the petitioner, while submitting that the offence alleged against the petitioner is serious in nature and other cases have also been registered against him under the NDPS Act, however he does not dispute the fact that no recovery has been effected from the petitioner and the challan stands presented.

Confronted with the same learned counsel for the petitioner submitted that nothing has been recovered from the petitioner and though other FIRs are pending against the petitioners yet as per settled law laid down by the Apex Court in ***Maulana Mohd. Amir Rashdi vs. State of Uttar Pradesh and Another in Criminal Appeal No. 159 of 2012***, it is the facts of the present case which are required to be considered for the purpose of deciding the present bail application.

I have heard learned counsel for the parties.

Petitioner is in incarceration since 24.08.2022.

It is not a case made out by the respondent-State that in case concession of bail is granted to the petitioner, he would hamper the course of free and fair trial. Further, since the petitioner has been nominated as an accused only on the disclosure statement of the co-accused and nothing has been recovered from the petitioner and the challan stands presented but the charges are yet to be framed and conclusion of the trial would take sufficient time, so no useful purpose would be served in keeping the petitioner behind bars.

Resultantly, without meaning any expression of opinion on the merits of

the case, it is ordered that the petitioner be released on regular bail subject to his

furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court concerned on the following conditions:-

1. *he shall appear before the Court on each and every date of hearing;*
2. *he shall not give any threat or intimidation to the prosecution witnesses;*
3. *he shall not indulge in any criminal activity.*

The Court accepting bonds would ensure that two local sureties who are financially sound having immovable properties within jurisdiction of the district furnish the bonds.

In addition to that the trial Court may impose any term and condition found suitable to ensure that the petitioner does not abscond and interfere in the trial.

In case the petitioner violates any terms and conditions on which the bail has been granted to him, the prosecution would be entitled to apply for cancellation of his bail.

The petition is allowed accordingly.

(DEEPAK MANCHANDA)
JUDGE

01.06.2023

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Whether speaking/reasoned	Yes
Whether Reportable	Yes /No