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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.15330 of 2022 (O&M)

Date of decision: 06.02.2023

Vijay Kumar

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Gourave Bhayyia, Advocate
for the petitioner.

Mr. Ajit Singh Natt, AAG, Punjab.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this 2nd 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.470 dated 16.09.2021 under Sections 18, 21, 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station City Barnala, District Barnala.

The new ground for filing this petition is that the petitioner is in custody for the last 01 year and 01 month and out of 13 PWs only 01 PW has been examined before the trial Court.

Counsel for the petitioner has argued that one of the co-accused of the petitioner namely Bablu Kumar, who was arrested at the spot has already been granted the concession of bail vide order dated 13.01.2023 passed in CRM-M No.7821 of 2022. The operative part of the said order, reads as under:-

*“According to the prosecution, on 16.09.2021
Inspector Baljit Singh received a secret information that*

accused Surinder Kumar alias Rimpay and petitioner Bablu are habitual of selling the heroin and opium on their Verna Car no. 7950 of white colour and today also they have to supply the heroin and opium from Rampura to Barnala in the above said vehicle. If they are searched in the area of main road Barnala to Handiaya or near Barnala City then they could be caught red handed alongwith heroin and opium. As the information was from the reliable source and on the basis of this secret information case was got registered. Then further investigation was carried out by SI Gurbachan Singh. During the patrolling and nakabandi SI Gurbachan Singh along-with other police officials has apprehended petitioner and the co-accused in the jurisdiction of Handiaya and from their possession Varna car bearing registration no. DL-3CBP-7950 of white colour and 1 kg 800 gram opium was recovered and they were arrested in the present case. At the instance of accused Surinder Kumar, 1 kg 200 gram opium was recovered. During the investigation of the case and interrogation of accused Surinder Kumar, 16 gram opium was recovered from his house. On 18.09.2021 during the investigation in the present case, accused Vijay Kumar was nominated as an accused and he was arrested in the present case on 24.12.2021 and offence under Section 29 of NDPS Act was added upon.

Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the present case as he was not present at the spot. The present recovery has been planted upon him. The alleged recovery falls under the category of “non-commercial quantity”. He further submits that petitioner is not involved in any other case under the NDPS Act. He further submits that out of total 30 prosecution witnesses, only one witness has been examined till date. Petitioner is in custody for more than 01 year and 03 months. Learned counsel further submits that conclusion of trial may take a considerable time. No useful purpose would be served by keeping the petitioner behind the bars, therefore, he may be granted regular bail.

Per contra, learned State counsel opposes the prayer for grant of regular bail to the petitioner, however, he could not refute the abovesaid factual position that contraband recovery from the petitioner falls under the category of “non-commercial quantity”; petitioner is in custody for the last 01 year 03 months and 19 days;

challan has been presented and charges in the present case have been framed; out of 30 prosecution witnesses, only one witness has been examined till date and also the fact that no case is pending against the petitioner and that trial is likely to take a considerable time. The next date before the trial Court is 30.01.2023.”

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

Counsel for the petitioner has further argued that the name of the petitioner was figured in the disclosure statement of one Surinder Kumar as a person, who was the original owner of the Verna car, which was later on sold to the accused persons. It is further submitted that the conclusion of the trial is likely to take some time and there is no direct allegation against the present petitioner as he was not present at the spot.

Counsel for the petitioner has relied upon the judgment **“Tofan Singh vs State of Tamil Nadu”, 2013(4) RCR (Criminal) 631**, to submit that it will be a debatable issue whether the disclosure statement made by the co-accused will be admissible against the petitioner 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 01 month and 08 days; the co-accused of the petitioner is already released on bail; the custodial interrogation of the petitioner is not required and in view of **Tofan Singh’s case (supra)** and also in view of the fact that out of 13 PWs, only 01 PW has 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

06.02.2023
yakub

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