

CRM-M-15067-2023 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-15067-2023 (O & M)

Date of decision: 11.05.2022

Ajay Ram

..... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sahil Choudhary, Advocate, for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.313 dated 29.05.2021 under Sections 18 of the NDPS Act (Section 29 NDPS Act added later on) registered with Police Station Shahbad Markanda, District Kurukshetra.

2. The brief facts of the prosecution case are that the investigating agency received secret information that two persons namely Irshad son of Mojiv and Ashfaq son of Islam were indulging in the sale of opium and were taking intoxicating substance in huge quantity from Karnal to Ambala, and if a barricading was done, the said two persons could be arrested and huge quantity of intoxicating substance could be recovered. Based on the

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and a truck bearing registration No.OD-16E-7172 was seen coming from Shahabd to Pipli, which was signalled to stop. The accused, namely, Mohammad Irshad was on the driver-side and the person sitting on the cleaner side was Mohammad Ashfaq. After the completion of the formalities, a recovery of 5Kgs. of opium was effected from them.

On 30.05.2021, the arrested accused got recorded their disclosure statements stating that the petitioner-Ajay son of Inder Ram and Ujjain son of Iqbal had supplied them (arrested accused) a total 08 kilos 500 grams of opium out of which 05 kilos of opium was to be handed over to Ram Pal and his brother-Krishan against a cash amount. 03 kilos 500 grams opium was to be sold by the petitioner at Kaithal and Cheeka but unfortunately, the petitioner had been arrested on 29.05.2021 in Police Station Cheeka Area.

On 09.06.2021, the production warrants of the petitioner were issued for 15.06.2021 and he was joined in investigation in the instant case. He suffered his disclosure statement in the present case admitting the commission of the offence as also the fact that he (petitioner) was going to sell 3 kilos 500 grams of opium at Cheeka and Kaithal when he was arrested by the police on 29.05.2021, leading to the registration of FIR No. 150 dated 29.05.2021 under Sections 18, 29, 61, 85 NDPS Act at Police Station Cheeka, Kaithal and the consequent recovery of 3 kilos and 500 grams of opium from him.

3. The learned counsel for the petitioner contends that the petitioner was not named in the FIR but only in the disclosure statements of

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the arrested accused. Pursuant to the arrest of the petitioner, no recovery was effected from him. Therefore, as there was no admissible evidence whatsoever available against the petitioner, he was entitled to the concession of bail in view of the judgments passed in the cases of '*Tofan Singh versus State of Tamil Nadu, 2020 AIR (Supreme Court) 5592*', '*Rakesh Kumar Singla versus Union of India 2021 (1) RCR (Criminal) 704*'; '*Surinder Kumar Khanna versus Intelligence Officer Directorate of Revenue Intelligence, 2018(3) RCR (Criminal) 954*'; '*State by (NCB) Bengaluru versus Pallulabid Ahmad Arimutta & Anr. 2022(1) RCR (Criminal) 762*' and '*Sanjeev Chandra Agarwal & Anr. Versus Union of India 2021(4) RCR (Criminal) 590*', moreso when a similarly situated co-accused, namely, Mukesh Kumar @ Vekuli Yadav had been granted the similar concession vide order dated 26.04.2022 (Annexure P-3).

4. The learned State counsel, on the other hand, submits that the petitioner is the main supplier who supplied 08 kilos 500 grams opium to the arrested accused. 05 kilos came to be recovered at the spot whereas 03 kilos 500 grams of opium came to be recovered from the petitioner in FIR No.150 dated 29.05.2021. He, therefore, did not deserve the concession of bail. The learned State counsel fairly admits that other than the disclosure statements of his co-accused and that of his own, there is no admissible evidence against the petitioner.

5. I have heard the learned counsel for both the parties at length.

6. Admittedly, no recovery whatsoever has been effected from the petitioner. The evidentiary value of the various statements made in police

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custody would be adjudicated upon during the course of the trial. As the petitioner is in custody since 15.06.2021 and the investigation stands completed, the further incarceration of the petitioner is not required, moreso when his co-accused has been granted bail vide order dated 26.04.2022 (Annexure P-3).

7. Therefore, without commenting upon the merits of the case, the present petition is allowed and the petitioner-Ajay Ram is ordered to be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the concerned Trial Court/Duty Magistrate.

8. The petitioner shall appear on the first Monday of every month before the police station concerned till the conclusion of the trial and furnish an affidavit each time that he is not involved in any crime other than the cases mentioned in this order

9. In addition, the petitioner (or through someone else on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from Trial without sufficient cause.

(JASJIT SINGH BEDI)
JUDGE

May 11, 2023
sukhpreet

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