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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-16406-2023
Date of decision : 14.12.2023

ABDUL MAJID

....Petitioner

Versus

STATE OF HARYANA

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Aman Godara, Advocate for the petitioner.

Mr. Gaurav Bansal, DAG, Haryana.

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.342 dated 16.09.2022 registered for the offences punishable under Sections 21(C), 61, 27A, 29 and 85 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') and Sections 3 and 14 of Foreigners Act, at Police Station Sector-5, District Gurugram.

2. Custody Certificate of the petitioner has been filed today in Court. The same is taken on record.

3. As per the contents of the FIR, it has been alleged as under :

“To, the SHO PS Sec-5 Gurugram, Jai Hind. Today I SI with staff Ct. Harpal No. 3169, Ct. Pawan No. 4578, Ct.

Ankit No. 3197 with Govt. Vehicle No. HR 26DW 9114 driver Ct. Rambir No. 3268 were present at Sec-12 Chowk Mata Mandir Road regarding patrolling then a special informer given

information to SI that Asikul Sheik Slo Mujmil Seikh R/o Sikarpur, PS Farka Distt. Murshidabad W.Bengal and Nishar Ahmed Slo Abdul Hamid R/o Hailmond, Afghanistan, who is in the business of selling of Narcotics Smack (Heroin). Today they have kept smack (Heroin) in a rented house 2nd floor in the building constructed near Sheetla Mata Mändir, Gurgram and two persons can be caught red handed with Smack (Heroin). The special informer signaled from road towards building and room, after verifying the information of accused as correct entered into the building at second floor and informed the accused from the information of informer, where two boys met in the room, whose name address was asked then first boy revealed his name as Asikul Seikh S/o Mujmil Seikh R/o Sikarpur PS Farka, Distt. Murshidabad, W.Bengal and Nishar Ahmed S/o Abdul Hamid R/o Hailmand, Afghanistan. They were informed that there is an apprehension of they being in possession of Narcotic Substance and therefore two separate notices under Section 50 NDPS Act prepared. The accused Asikul Seikh S/o Mujmil Seikh R/o Sikarpur PS Farka, Distt. Murshidabad, W. Bengal and Nishar Ahmed S/o Abdul Hamid R/o Hailmand, Afghanistan heard their notices and asked for getting searched in presence of a Gazetted officer and according y the Duty Magistrate Kuldeep Singh SDO PWD IRRIGATION DEPARTMENT, Gurugram came to the spot, who gave notice u/s 42 NDPS Act after being apprised of circumstances, he made my physical search and after interrogating Asikul Seikh Slo Mujmil Seikh R/o Sikarpur PS Farka, Distt. Murshidabad, W.Bengal and Nishar Ahmed S/o Abdul Hamid R/o Hailmand, Afghanistan ordered me to search accused Asikul Seikh S/o Mujmil Seikh R/o Sikarpur PS Farka, Distt. Murshidabad, .Bengal and Nishar Ahmed Slo Abdul Hamid R/o Hailmand, Afghanistan and their room, that time I SI asked tenant residing in the building to join the Investigation, all went from the spot after stating their reason of being busy on their personal work then on searching Asikul Seikh S/o Mujmil Seikh R/o Sikarpur PS Farka, Distt.

Murshidabad, W.Bengal and Nishar Ahmed S/o Abdul Hamid R/o Hailmand, Afghanistan in the presence of Duty Magistrate Kuldeep Singh SDO PWD IRRIGATION DEPARTMENT, Gurugram, three white colour polythene kept in the Almirah, in which chemical intoxicating article, caffeine and smack (heroine) in one polythene were recovered, who revealed that we both have to visit to Delhi for selling these items. I took out electronic weighing machine from my kit and weighed these items before Duty Magistrate Kuldeep Singh SDO PWD IRRIGATION DEPARTMENT, Gurugram then one Polythene of Smack (heroine) weight found as 1.308 KG, second polythene white colour of chemical intoxicating item weight 0.993 KG and Caffeine in third polythene weight 1.390 KG were recovered. Licence and permit of keeping above intoxicating item was asked from accused Asikul Seikh S/o Mujmil Seikh R/o. Sikarpur PS Farka, Distt. Murshidabad, W.Bengal and Nishar Ahmed S/o Abdul Hamid R/o Hailmand, Afghanistan and also asked VISA and Passport of Nisar Ahmed then they could not present it. The intoxicating items were kept in separate white colour parcel and sealed from 5-5 SK seals and after using it the same was returned to Ct. Harpal No. 3169 and Duty Magistrate Kuldeep Singh SDO PWD IRRIGATION DEPARTMENT, Gurugram has further sealed from his seal SG and kept his seal in his possession and verified parcel of Smack (Heroin), parcel white chemical intoxicating item and parcel of Caffeine, its receiving list taken in police possession, on this accused persons Asikul Seikh and Nisar Ahmed above and GAZETTED Officer Kuldeep Singh SDO. PWD IRRIGATION DEPARTMENT, Gurugram and witnesses have affixed their signatures. The accused persons Asikul Seikh and Nisar Ahmed above committed offence of U/s 21(C)-61-85 NDPS Act and 3, 14 Foreigner Act, 1946 after keeping 1.308 KG Smack (Heroine), 0.993 KG White chemical intoxicating item and 1.390 KG Caffeine, hence Tehrir sending to Police Station by hand Ct. Ankit No. 3197 for the registration of case, kindly inform with

case number after registering the case and investigating officer should be sent to the place of incident for further proceedings. I SI with staff and accused persons are busy at spot. Place: - sec-12 road near Singa Chowk, Gurugram SD/- Subhash SI PS Sec-5, Gurugram, dated 16.09.2022. Today on receiving above information in the police station above case registered in computer and prepare copies and sending after preparing special report through e-mail to duty magistrate and Sr. Officers. I SI with Ct. Ankit 3197 and copy of FIR and original tehrir is sent to SI Subash 342. (This case was registered in the presence of SI Ishwar Singh 615/Gurugram, in which IO is SI Ishwar Singh 615/Gurugram.”

4. The case of the prosecution is that after the aforesaid accused namely Abdul Majid @ Bablu and Nisar Ahmed were taken into custody they suffered disclosure wherein they named the present petitioner and one Sawinder thus the present petitioner was nominated with the aid of Section 29 of the NDPS Act. The role of the petitioner has been culled out in the reply filed by way of affidavit of Satender Kumar, HpS, ACP, Udyog, Gurugram, dated 21.07.2023 and the same reads as under :

“5. That the petitioner Abdul Majid @ Bablu was arrested on 17.09.2022. His disclosure statement was recorded. The police remand of the petitioner Abdul Majid @ Bablu and accused Nisar Ahmed was obtained for three days on 18.09.2022. During police remand, they identified Sawinder as the person to whom they used to give the money earned by selling the smack.

6. That the accused Sawinder was arrested on 20.09.2022. His mobile phone was taken into police possession. His disclosure statement was recorded. Section 27-A, 29 NDPS Act were added in the present case on 20.09.2022. He got recovered the amount of Rs. 1 Lakh (out of the amount of Rs. 8 Lakhs which was

recovered by him). The samples of the recovered contraband were sent to RFSL Bhondsi for examination. The report dated 10.02.2023 received from RFS Bhondsi is attached herewith as Annexure R-1 for kind perusal of this Hon'ble Court. The recovered contraband is commercial quantity.

7. That the challan against the petitioner Abdul Majid and co-accused Asikul Shekh, Nisar Ahmed and Sawinder was submitted in the Ld. Court on 22.12.2022. The charges were framed on 04.05.2023. Now, the trial is pending in the Court of Ld. ASs, Gurugram and is fixed for 19.08.2023 for prosecution evidence. There are total 23 PWs in the present case and 01 PW has been examined.

8. That the role of the petitioner Abdul Majid in the present case is that he came in contact with accused Ahmed Suja resident of Afghanistan who was in Tihar Jail in the offence under NDPS Act. After releasing from jail, the petitioner Abdul Majid @ Bablu, and co-accused Nisar Ahmed and Asikul Sheikh used to procure the raw material i.e. coffin, chemical powder, shampoo etc., used to prepare smack (heroin) in the room of Asikul Sheikh and used to sell the same at different places. Further, the petitioner had handed over the amount of Rs. 8 Lakhs to co-accused Sawinder from the proceeds of sale of Smack.”

5. Counsel thus submits that apart from the disclosure made by co-accused wherein they named the present petitioner as one of their accomplices there is nothing incriminating against him. Not only challan stands presented but the trial is also proceeded considerably as 9 out of 23 cited witnesses already stands examined. Petitioner is behind bars for more than 1 year 2 months and 21 days. In another case wherein the petitioner was booked i.e. FIR no.178/2011 for offence punishable under Section 21

of the NDPS Act, the petitioner has already earned acquittal. Further reliance is being placed upon **Tofan Singh vs. State of Tamil Nadu, (2021) 4 SCC 1** to submit that disclosure made by co-accused while in police custody alone cannot be relied upon to hold the petitioner guilty. He thus submits that the only incriminating evidence on record being in form of disclosure there are very oblique chances that the petitioner will be convicted as there is no recovery attributed to the present petitioner.

6. The aforesaid submissions being borne out of record are not disputed by the State Counsel who however submits that it is highly improbable that the petitioner if getting bail shall attend the trial. There being a flight risk, the petitioner does not deserve to be released on bail.

7. I have heard counsel for the parties and have gone through records of the case.

8. In the considered opinion of this Court keeping in view the allegation and the role assigned to the petitioner and the nature of evidence that has come against the present petitioner during investigation and the incarceration suffered by the petitioner, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

9. However in order to allay the fears expressed by the State Counsel, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned the petitioner is being put to following

terms :

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any with the trial Court.
- (vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.
- (vii) The petitioner shall not in any manner try to delay the trial.

10. In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.

11. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

December 14, 2023
Dpr

(Pankaj Jain)
Judge

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