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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-17704-2022 (O&M)

Date of decision : 13.03.2023

Ajay Kumar @ Kala

....Petitioner

Vs.

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Rajesh Khandelwal, Advocate for the petitioner.

Mr. Sukhdeep Parmar, DAG, Haryana.

MANOJ BAJAJ, J.

Petitioner has filed this second petition under Section 439 Cr.P.C for grant of regular bail in case FIR No.117 dated 25.02.2021 under Sections 20, 25, 27 and 61 Narcotic Drugs and Psychotropic Substances Act, 1985, Section 307 Indian Penal Code, 1860 and Section 25 Arms Act, 1959 (Section 420 IPC added later on) registered at Police Station Bhiwani Sadar, who is in custody since his arrest on 25.02.2021.

The allegations in the FIR as noticed by the learned Additional Sessions Judge, District Bhiwani in the order dated 02.03.2022 are as under:-

“As per fundamental facts transpired from reply filed by police, a secret information was received in the night of 24/25.02.2021, that heavy quantity of contraband (Ganja) is being transported in a Tempo-traveller, vide a particular route. Upon that information, local police

raised a check-point and checked the vehicles. In the meantime, a Tempo-traveller bearing registration No.HR61C-8631 being driven by other co-accused Pardeep, came from Rohtak side. When police tried to stop that vehicle, Ajay fired a gun-shot towards police party. Thereafter, police party fired upon the vehicle and one bullet hit into the right hand of Ajay. Thereafter, vehicle was got stopped. On checking, approximately 320 kg Ganja as well as arms (one country made pistol, one live cartridge and two empty cartridges) were got recovered and thereafter, applicant was admitted in Government Hospital at Bhiwani due to injury. Thereafter, after declaring him fit, applicant was arrested on 02.03.2021.”

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case and no recovery of contraband was effected from him. He submits that the petitioner is a victim of police atrocities and in fact a case ought to have been registered against the police and the petitioner brought a petition before this Court through CRM-M-51853-2022, wherein this Court vide order dated 14.11.2022 relegated the petitioner to submit his representation before Superintendent of Police/Commissioner of Police with a further direction to the officer to decide it within two months. According to learned counsel despite that order, no action has been taken upon petitioner's representation. Learned counsel further argued that the statement of EHC Sumer Singh recorded under Section 161 Cr.P.C, who is Moharir Malkaha shows that the recovered ganja was sent to the FSL for analysis through RC No.117 dated 18.03.2021, whereas the report of FSL contains different RC number 82, therefore, this material discrepancy makes the prosecution case extremely weak. Learned counsel has further pointed out that the trial is not progressing as the other

co-accused are not appearing, therefore, his further custody may not be necessary. He prays for bail.

The prayer is opposed by learned State counsel assisted by ASI Ramesh Kumar on the ground that the petitioner was involved in commission of crime and he was travelling in the same vehicle from which 320 kg and 152 grams ganja was recovered and the said vehicle was driven by co-accused-Pardeep. Learned State counsel has pointed out that the recovery was effected after an encounter between the accused and the police, resulting in gunshot injury to petitioner.

During the course of hearing, learned State counsel has also pointed out that the bail order of driver of the vehicle, namely, Pardeep granted by trial Court was cancelled by this Court vide order dated 01.12.2021. While considering the earlier bail application by the petitioner. He submits that despite cancellation of the bail, accused-Pardeep has not surrendered and attempts are being made to arrest him. He prays for dismissal of the bail application.

Upon hearing learned counsel and considering the rival submission, it becomes clear that as per prosecution, the contraband was recovered from a vehicle bearing No.HR-61-C-8631 after an encounter with the accused persons and concededly the petitioner, who had suffered a gunshot injury was admitted in the hospital by police. Therefore, the argument that nothing was recovered from the petitioner is apparently misplaced. The other argument relating to the discrepancy highlighted by the

learned counsel in the statement of EHC Sumer Singh relating to the RC number, whereby the contraband was sent to the FSL to raise doubt in the prosecution case, cannot be given much significance at this stage and the same would be examined by the trial Court after conclusion of entire prosecution evidence. Though the statement under Section 161 Cr.P.C by EHC Sumer Singh contains the RC number as 117, but same is the FIR number also, therefore, the possibility of it being a typographical mistake cannot be ruled out. Thus, considering the facts and circumstances of this case particularly the nature and quantity of the contraband as well as the manner of commission of crime, this Court does not find it to be a fit case for releasing the petitioner on regular bail, at this stage.

Resultantly, without meaning any expression of opinion on the merits of the case, no case is made out for concession of regular bail to the petitioner.

Petition is dismissed.

As the main case has been decided, all pending applications are rendered infructuous.

13.03.2023
vanita

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No