

CRM-M-20175-2023 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-20175-2023 (O & M)

Date of decision: 27.07.2023

Diaby Ousmane

..... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Arjun Veer Sharma, Advocate,
for the petitioner.

Mr. Harkanwar Jeet Singh, AAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of the regular bail to the petitioner in FIR No.09 dated 16.01.2023 under Sections 20, 22, and 29 of the NDPS Act, 1985 registered at Police Station Division No.8, District Ludhiana.

2. The brief facts of the case are that while the police party was on patrolling duty, then from the side of the Zila Parishad Office, one Ritz car bearing No.PB-10DJ-7236 was seen coming. On seeing the police party

standing ahead, the car driver stopped the car and started to turn the same

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around. The person sitting on the conductor side of the car threw one heavy polythene bag towards the corner of the road. The car was stopped on suspicion and the persons were un-boarded from the car. The driver of the car disclosed his named as Amit and the persons sitting on the conductor seat disclosed his name as Amandeep Singh. The person sitting on the rear seat disclosed his named as Babbar @ Mac. The recovery of 30 grams of Hashish came to be effected from Amit whereas from the polythene bag thrown by the person sitting on the conductor seat, namely, Amandeep Singh, the recovery of 63 grams of Hashish came to be effected. However, no recovery was effected from Babbar. Thereafter, on the disclosure statement made by Babbar, 20 grams of Hashish came to be recovered from his Activa scooter.

Co-accused Amandeep Singh's disclosure statement was recorded and pursuant thereto, one gram LSD and 06 grams MDMA came to be recovered from him.

During police remand, Amandeep Singh disclosed that he had purchased the contraband from one Manoj Bhatia who was nominated as an accused and arrested on 18.01.2023. The search of his Tata Tiago car led to the recovery of 830 grams of Hashish. The interrogation of Manoj Bhatia led to the recording of his disclosure statement naming one Inderjit Singh on 18.01.2023.

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Inderjit Singh was arrested and suffered a disclosure statement on 19.01.2023 naming one Muli Prakash Kullu who was arrested on 20.01.2023 leading to the recovery of 01 kg. Hashish.

Manoj Bhatia subsequently suffered another disclosure statement on 22.01.2023 stating that he had procured Hashish from Himachal Pradesh and Cocaine from one Mukul Bawa. Co-accused-Mukul Bawa was nominated as an accused on 22.01.2023. He was arrested on 24.01.2023 and the recovery of 10 gms of cocaine was effected from him. At the time when Mukul Bawa was arrested, he was travelling in a Mahindra XUV car and one African national Diaby Ousmane (petitioner) was travelling alongwith him and from whom the recovery of 15 grams of Cocaine came to be effected.

3. The learned counsel for the petitioner contends that taking the allegations to be true, the recovery from the petitioner was of 15 grams of cocaine which falls under the category of non-commercial quantity, the commercial quantity being more than 100 grams. As the petitioner was in custody since 24.01.2023, none of the 21 prosecution witnesses had been examined so far and he was a first-time offender, he was entitled to the concession of bail.

4. The learned counsel for the State, on the other hand, contends that the petitioner was a part of a large gang dealing in the supply of intoxicating substances. Therefore, he was not entitled to the concession of

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custody since 24.01.2023 and none of the 21 prosecution witnesses had been examined so far.

5. I have heard the learned counsel for the parties.

6. Admittedly, the recovery from the petitioner is of a non-commercial quantity of contraband. He is stated to be in custody since 24.01.2023 and none of the 21 prosecution witnesses have been examined so far. He is also a first-time offender. In this situation, the further incarceration of the petitioner is not warranted.

7. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Diaby Ousmane is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

8. In addition, the following conditions are imposed:-

(i) The petitioner (or someone else on his behalf) shall prepare an FDR in the sum of Rs.2,00,000/- 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.

(ii) The petitioner shall produce two local sureties to the satisfaction of the Trial Court/Duty Magistrate concerned.

(iii). The petitioner shall deposit his Passport with the investigating agency/Trial Court immediately, if not already done so.

(iv). During the pendency of the Trial, the petitioner's passport shall not be released to him under any circumstances whatsoever.

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(v). The Embassy of Cote d' Ivorie, Ivory Coast In India shall be intimated through proper channel immediately that no alternate/duplicate travel documents are to be provided to the petitioner under any circumstances whatsoever during the pendency of the present petition.

(vi) 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 case/crime other than the present one.

(vii) If the petitioner indulges in the commission of any offence while on bail, the State would be at liberty to move an application for cancellation of bail granted by this order.

July 27, 2023
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No