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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-20331-2023 (O & M)
Date of decision: 20.10.2023

Krishan

..... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Ms. Himani Anand, 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, 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 a huge quantity of intoxicating substance could be recovered. Based on the aforementioned information, the investigating agency proceeded to the spot and a truck bearing registration No.OD-16E-7172 was seen coming from

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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 Ajay (since granted bail vide order dated 11.05.2022) 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 Ajay at Kaithal and Cheeka but unfortunately, Ajay had been arrested on 29.05.2021 in Police Station Cheeka Area.

On 09.06.2021, the production warrants of the Ajay 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 (Ajay) 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.

In the disclosure statements of Ajay Ram and Mohd. Ashfaq, the names of the petitioner and Mukesh Kumar @ Vekuli Yadav (since granted bail vide order 26.04.2022) also figured.

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3. The learned counsel for the petitioner contends that the petitioner was not named in the FIR but only in the disclosure statements of 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 two similarly situated co-accused, namely, Mukesh Kumar @ Vekuli Yadav and Ajay Ram had been granted the similar concession vide orders dated 26.04.2022 and 11.05.2023.

4. The learned State counsel, on the other hand, submits that the petitioner is one of the main accused. There was evidence that the petitioner had transferred a sum of Rs.25,000/- a few times in the account of his co-accused Ashfaq which established the connection between him and his co-accused. There was evidence of call records between the petitioner and the arrested accused and the petitioner had destroyed his mobile phone. Therefore, in view of the evidence on record, the petitioner did not deserve the concession of bail. He, however, concedes that the petitioner is a first-time offender, in custody since 21.06.2021, 06 of the 24 prosecution

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witnesses had been examined so far and that the co-accused Ajay Ram and Mukesh Kumar @ Vekuli Yadav had been granted the concession of bail orders 26.04.2022 and 11.05.2023.

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 custody would be adjudicated upon during the course of the trial. As the petitioner is in custody since 21.06.2021 and only 06 of the 24 prosecution witnesses had been examined so far, the further incarceration of the petitioner is not required in terms of law laid down in '*Nitish Adhikary @ Bapan versus The State of West Bengal SLP (Crl.) Nos.5769/2022 arising out of judgment and order dated 04.05.2022 in CRM (NDPS) No.442/2022, decided on 01.08.2022 and Hasanujjaman & others versus The State of West Bengal, SLP (Crl.) No.(s) 3221/2023 arising out of impugned final judgment and order dated 29.11.2022 in CRM(NDPS) No.1323/2022 decided on 04.05.2023*', moreso when two of his co-accused, have been granted bail vide orders dated 26.04.2022 and 11.05.2023.

7. Therefore, without commenting upon the merits of the case, the present petition is allowed and the petitioner-Krishan 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

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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

October 20, 2023
sukhpreet

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