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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(219)

CRM-M-22892-2023
Date of decision:- 14.12.2023

Rohtash Kumar ... Petitioner
Versus
State of Haryana ... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Aditya Sanghi, Advocate for the petitioner.
Mr. Munish Sharma, DAG, Haryana for State-respondent.

SUVIR SEHGAL, J. (ORAL)

1. This is the third petition filed under Section 439, Cr.P.C. seeking grant of post-arrest bail in:-

FIR No.	Dated	Police Station	Sections
278	05.08.2020	City Mandi Dabwali, District Sirsa	22(c) of the NDPS Act

2. FIR, Annexure P-1, has been registered when on the basis of suspicion, a person, who identified himself as Shivraj Singh @ Raju, was searched and was found to be carrying 5000 tablets, containing salt *Tramadol Hydrochloride* in a plastic bag.

3. Counsel for the petitioner contends that petitioner has been arraigned as an accused on the basis of disclosure statement of the main accused, which cannot be read into evidence. He has placed reliance upon the judgment of the Supreme Court in *Tofan Singh Versus State of Tamil Nadu (2021) 4 SCC 1*, and urges that the statement of an accused recorded in

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police custody is hit by Section 25 of the Evidence Act, 1872. He submits that despite custody since 06.08.2020, trial is at an initial stage and the petitioner deserves to be released on bail. Still further, it is his submission that although petitioner is named as an accused in two other criminal cases, but he has been falsely implicated and is on bail.

4. Opposing the petition, State counsel, upon instructions from SI, Krishan Kumar, submits that as the recovery of contraband effected from the co-accused weighs out to 2 kg 120 grams of Tramadol, which falls within the scope of commercial quantity, bar under Section 37 of the NDPS Act is applicable. As per his instructions, trial is underway and some prosecution witnesses have been examined.

5. I have heard counsel for the parties and considered their respective submissions.

6. Concededly, no recovery has been effected from the petitioner in the present case. Rigor of Section 37 of the NDPS Act would, therefore, not apply as has been held by a Division Bench of this Court in ***Dharamveer and another Versus State of Punjab (CRM-M-25433-2015***, decided on 07.10.2015). As per the Custody Certificate, which is already on the record, petitioner is in detention for more than eighteen months. This Court had called for a report from the Trial Court regarding the progress of the trial and intimation has been received that only two prosecution witnesses have been examined. It is, therefore, evident that the trial is at an embryonic stage and there is a little possibility of its early conclusion. Considering these factors, this Court is prima facie of the view that the petitioner has made out a case for enlargement on bail.

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7. Without adverting to the merits or demerits of the arguments addressed by counsel for the parties, petition is allowed. Petitioner is ordered to be released on bail on furnishing adequate bail/surety bonds to the satisfaction of the Area Magistrate/Duty Magistrate/Trial Court concerned.
8. Nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

14.12.2023
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No