

212 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-32292-2021 (O&M)
DECIDED ON: 28th MARCH, 2023

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.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. P.S. Sekhon, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

CRM-14037-2023

Prayer in the present application is for placing on record the copy of judgment dated 08.01.2019 passed by learned Judge, Special Court, Sangrur titled as “**State of Punjab Vs. Paso**” as well as the statement of Lady Senior Constable Jaswinder Kaur as Annexures A-1 and A-2 respectively with further prayer for exemption for filing the certified copies thereof.

Application is allowed, as prayed for.

Annexures A-1 and A-2 are taken on record.

CRM-M-32292-2021

The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked for the grant of regular bail to the petitioner in case FIR No. 61, dated 06.04.2021, under Sections 22 & 29 of Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Dirba, District Sangrur.

Learned counsel for the petitioner has contended that the petitioner has been falsely implicated in the present case while referring to the timing of the procedure completed by the police party starting from the registration of present FIR (Annexure P-1). He has drawn attention of this Court to the fact that the police party has seen the petitioner at around 5.30 PM and nabbed her and finally got registered the FIR after completing the procedure of recovery etc. at about 6.15 PM. Today, learned counsel for the petitioner has placed on record the statement of PW-2 LC Jaswinder Kaur who in her cross-examination after confronting with the record states that a consent statement of the accused was got recorded at 7.30 PM whereas the recovery memo was prepared at about 6.15 PM after conducting the personal search of the petitioner at about 8.00 PM, which shows that the consent memo was prepared much prior to the alleged recovery of the contraband. The timing of preparation of recovery memo as well as nabbing of the petitioner, apart from the fact that the FIR was registered at about 6.15 PM after completion of all the procedure, raises a series doubt in the prosecution story.

Custody certificate of the petitioner filed by the counsel for the State is taken on record. According to which the petitioner has suffered incarceration for a period of 1 year 11 months and 22 days as of now. He opposes the prayer made in the present petition on the ground that the contraband so recovered from the possession of the petitioner is commercial in nature and the discrepancy in recording the timings is a procedural lapse, which cannot be fatal to the story of prosecution and in the light of recovery of the contraband which falls under commercial quantity the petitioner does not deserve the concession of regular bail.

This Court is of the considered view that there is a severe discrepancy in recording of timings wherein at one go it shows that proceedings of recovery and registration of FIR had completed at 6.15 PM which is absolutely contrary to the cross-examination of PW-3 who has candidly admitted that the recovery memo was prepared at 7.30 PM whereas recovery was effected admittedly prior to that i.e. at 6.15 PM. The another discrepancy occurred while lodging the FIR is that the recovery memo was prepared at about 6.15 PM by the Investigating Officer and the personal search of the petitioner was conducted at about 8.00 PM, which also creates a serious doubt of the prosecution story, therefore, the petitioner deserves the concession of regular bail.

Considering the afore-said facts and circumstances added with the facts that there is severe discrepancy in recording the timings of the recovery memo, consent statement and personal search; nothing is to be recovered from the possession of the petitioner, challan stands presented wherein conclusion of trial shall take sufficient long time, the petitioner is ordered to be released on bail subject to his furnishing personal and surety bonds to the satisfaction of learned Chief Judicial Magistrate/Duty Magistrate concerned.

The present petition is allowed in view of afore-said terms.

However, it is made clear that any observation made hereinabove, shall not be construed as an expression of opinion on the merits of the case.

28th MARCH, 2023
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*