

CRM-M-28534-2023

::1::

(229)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-28534-2023 (O & M)

Date of decision: 02.08.2023

Rajbir Singh @ Raju

.... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Ms. Garima Sharma, Advocate,
and Mr. Dhruv Gupta, 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.327 dated 01.09.2022 under Sections 21/27-A/29/61/85 of the NDPS Act registered at Police Station Parao, District Ambala.

2. The brief facts of the case are that while the police party was on patrolling duty, secret information was received that Anjali wife of Akbar alias Lucky, Anwar alias Abhi son of Shaka and Rekha wife of Shyamlal alias Shyama were in the business of supplying drugs. All of them had gone in a rented car bearing No.PB11CM-8500 make Swift DZire to collect heroin/*chitta* from Delhi and were roaming around giving supplies. They would be proceeding to Deha Colony, Ambala City from Shahabad. If a *nakabandi* is set-up, they could be apprehended.

CRM-M-28534-2023

::2::

(229)

Based on the aforementioned information, a *nakabandi* was set-up and the Swift DZire car was seen coming from ahead. It was signalled to stop. The boy sitting on the driver seat disclosed his name as Rajbir Singh alias Raju (petitioner), the boy sitting on the adjacent seat disclosed his named as Anwar alias Abhi, the woman sitting behind the driver seat disclosed her name as Rekha and the other woman sitting with her called herself Anjali. She had a new born baby on her lap. After complying with the provisions of the Act regarding search and seizure, the recovery of 300 grams of heroin came to be effected from Anjali, 300 grams of heroin from Rekha and 400 grams of herion from Anwar alias Abhi.

3. The learned counsel for the petitioner contends that the petitioner is merely a driver of the vehicle which was owned by his father. The recovery was effected from the other persons travelling in the vehicle and not from the petitioner. Therefore, it would be a moot point during the course of the trial as to whether the petitioner could be stated to be in conscious possession of the contraband. As the petitioner was in custody since 01.09.2002 and none of the 23 prosecution witnesses had been examined so far, he was entitled to the concession of bail, moreso, as he was a first-time offender with no other case registered against him under the NDPS Act.

4. The learned counsel for the State while referring to the reply dated 27.07.2023 contends that a huge quantity of the contraband came to be effected from the co-accused of the petitioner who were travelling in his car.

Though, no recovery had been effected from the petitioner, he was certainly

in conscious possession of the said contraband as he was aware of the

CRM-M-28534-2023

::3::

(229)

contents of the bags carried by the co-accused. He, however, concedes that the petitioner is a first-time offender, in custody since 01.09.2022 and none of the 23 prosecution witnesses had been examined so far.

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

6. Admittedly, 300 grams of heroin each came to be recovered from Anjali and Rekha whereas 400 grams of heroin came to be recovered from Anwar alias Abhi and no recovery has been effected from the petitioner and he is stated to be the driver of the car in the ownership of his father Samay Singh. Therefore, it would be a moot point during the course of trial as to whether the petitioner could be stated to be in conscious possession. He is also a first-time offender with no other case registered against him under the NDPS Act. In this factual scenario, a *prima facie* satisfaction under Section 37 of the NDPS Act can be recorded that the petitioner has not committed any offence and was not likely to commit any offence in the future. As the petitioner is in custody since 01.09.2022 and none of the 23 prosecution witnesses have been examined so far, the trial in the present case is not likely to be concluded anytime soon. Therefore, the further incarceration of the petitioner is not required.

7. In view of the facts and circumstances of the present case and without commenting upon the merits of the case, it is directed that the petitioner-Rajbir Singh alias Raju be released on regular bail, subject to the satisfaction of the Trial Court/Duty Magistrate concerned.

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

CRM-M-28534-2023

::4::

(229)

an affidavit each time that he is not involved in any crime other than the present one.

9. In addition, the petitioner (or someone else on his behalf) shall prepare an FDR in the sum of Rs.50,000/- 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

August 02, 2023
sukhpreet

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