

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-38768-2023

Date of Decision: September 12, 2023

Mukesh Kumar @ Mukesh

...Petitioner

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA.

Present: Mr. Raman Chawla, Advocate for the petitioner.

Mr. Aditya Pal Singla, AAG, Haryana.

DEEPAK MANCHANDA, J.(ORAL)

Prayer in the second petition under Section 439 of the Cr.P.C. is for grant of regular bail to the petitioner pending trial in case FIR No.39 dated 17.01.2022, under Sections 21/21-C/61/85 of the NDPS Act, Police Station City Hansi, District Hisar, whereas the earlier bail application filed vide CRM-M-31208-2023 was dismissed as withdrawn vide order dated 30.6.2023 with liberty to file a fresh one.

The instant FIR came to be registered on the basis of secret information ostensibly received by the police party, wherein, it was alleged that the petitioner is coming towards Jagdish Colony to Barwala side on his motorcycle No.HR-21M-0426 along with narcotics and that if he is apprehended, recovery of narcotics can be made from him. On the basis of aforesaid allegations, the FIR was got registered and thereafter, nakabandi was laid at Shri Ram Temple, Near HP Patrol Pump, Virat Nagar, Hansi. After some time, one young boy was seen coming towards City Hansi, who

on seeing the police party became perplexed and tried to turn back his motor-cycle, afterward the said boy was apprehended by the police party. On inquiry, he disclosed his name and identity and on his personal search, intoxicating tablets were recovered from him.

Learned counsel for the petitioner contends that the petitioner has been falsely roped-in in the present case who is a handicapped person and paralyzed from one leg. Whereas, as per the allegations in the FIR, the petitioner was going towards Jagdish Colony on his motorcycle bearing registration No.HR-21-M-0426 and recovery of contraband was made from him. Learned counsel contends that the same has been foisted without considering the fact that he cannot drive the motorcycle being a handicapped person. Learned counsel further contends that as per the site plan, the place from where the recovery was shown to be effected is a busy place and no description of motorcycle has been shown in the said site plan. He further contends that the petitioner is neither the owner of the motorcycle nor the owner has been joined in the investigation. Further, from a perusal of the site plan, place of occurrence has not been disclosed from where the petitioner was apprehended. Learned counsel submits that while rejecting the bail of the petitioner, the trial Court did not consider the relevant fact that FIR Number was already mentioned in the recovery memo and the present case is a case of chance recovery and not a case on the basis of secret information. He further submits that the other co-accused, namely, Omi Devi, Mandeep Singh and Sunita Devi have already been granted the concession of anticipatory bail by this Court and the petitioner is not involved in any other case of similar nature and is in custody since

17.1.2022, wherein challan stands presented and charges have also been framed, however, no witness has been examined so far. He prays for bail.

Reply dated 11.9.2023, by way of affidavit of Dheeraj Kumar, HPS, Deputy Superintendent of Police, City Hansi, District Hisar has been filed by learned counsel for the State who submits that the contraband of 'chitta' was recovered from the possession of the petitioner and the quantity of same is 902 gms. which comes under the category of commercial quantity. He, however, does not dispute that the investigation is complete, challan stands presented and out of 21 witnesses none has been examined till today. Learned counsel also admits that the other co-accused, namely, Sunita, Mandeep @ Munna, Omi Devi were joined in the investigation on 30.7.2022 and 13.8.2022, respectively in compliance of the order passed by this Court. He also does not dispute that the petitioner is not involved in other case of similar nature.

Considering the custody of the petitioner, stage of the trial and that the co-accused have already been released on anticipatory bail, this Court finds that no useful purpose would be served in keeping the petitioner behind the bars.

Resultantly, without commenting upon the merits of the case, the petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing bail bonds/surety bonds subject to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate/trial Court concerned.

September 12, 2023
Gulati

(DEEPAK MANCHANDA)
JUDGE

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