

2023:PHHC:120274

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRM-M-41359-2023
Date of Decision: 13.09.2023**

Munna Lal

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Ms. Garima Sharma, Advocate
for the petitioner.

Mr. Praveen Chander Goyal, Addl. A.G., Haryana.

HARSH BUNGER J.

1. Petitioner (Munna Lal) has filed this second petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case bearing FIR No.335 dated 08.06.2022, under Sections 18 and 29 of the Narcotic Drugs and Psychotropic Substances Act, registered at Police Station Pinjore, Panchkula.
2. The first petition filed under Section 439 of the Code of Criminal Procedure (CRM-M-11539-2023) by petitioner was withdrawn vide order dated 31.05.2023.
3. Status report by way of affidavit dated 05.09.2023 of Mr. Ram Kumar, H.P.S., Assistant Commissioner of Police, Kalka has been filed on

behalf of State of Haryana, which is already on record.

4. Briefly as per the FIR, when Assistant Sub Inspector Pradeep Kumar, along with other police officials, was patrolling in the area of Police Station Pinjore, near Railway Gate, Pinjore, he received a call from Aman Kumar, H.P.S., who told him that he has received an information from Inspector Sukhbir that one Anil Bhalla, who was arrested in case FIR No.252 dated 31.05.2022, registered under Section 18 of the Narcotic Drugs and Psychotropic Substances Act and Section 25 of the Arms Act, has given a disclosure statement that the *opium*, which was recovered from his wife and daughter-in-law, was purchased from one Nirmal Singh, who is in the business of selling intoxicant substances and is stated to be a resident of Village Basaula, District Panchkula. Thereafter, a raid was conducted at the house of said Nirmal Singh and a person was found therein, who disclosed his name as 'Nirmal Singh' and got recovered *opium* from the kitchen of his house, which is stated to be kept in the transparent plastic box, which upon weighing, came to be 3 kg. 564 gm.

5. As per status report, Munna Lal (petitioner) was arrested in the instant case on 01.12.2022 on the basis of disclosure statement of Nirmal Singh (main accused). Thereafter, petitioner suffered a disclosure statement, wherein he stated that he was in need of money and accordingly, he met one Ashok Kumar @ Bablu resident of Jharkhand, who told him that he used to sell *opium* and if the petitioner wanted to earn money then he (Ashok Kumar @ Bablu) can aid him in selling contraband. The petitioner is stated to have contacted one of his relatives, namely Pawan resident of Nayagaon, District Mohali (Punjab), to arrange the customer for selling *opium* and the said Pawan @ Darvesh, who was known to Nirmal Singh (main accused), contacted him (Nirmal Singh) for selling *opium*. It is mentioned in the status

report that petitioner along with co-accused Pawan @ Darvesh visited the house of Nirmal Singh and delivered 2 kg. 500 gm. *opium* at the price of Rs.1,35,000/- per kg. and petitioner is stated to have given commission of Rs.20,000/- to co-accused Pawan @ Darvesh. It is further mentioned in the status report that on the disclosure statement of petitioner, co-accused Pawan @ Darvesh was arrested, who also suffered a disclosure statement, wherein he stated that he used to visit the petitioner (Munna Lal) and was working as a tractor driver, which belongs to one Pammi, who is stated be the relative of Nirmal Singh (main accused). It is stated that Pammi along with petitioner approached Nirmal Singh for selling the *opium*. Petitioner is further stated to have got demarcated the house of accused Nirmal Singh, where petitioner along with his nephew Pawan had delivered the *opium* weighing 2 kg. 500 gm.

6. Learned counsel for the petitioner submits that the petitioner is innocent and he has been falsely implicated in the instant case FIR No.335 dated 08.06.2022. It is submitted that petitioner has not been named in the FIR and he has been nominated as an accused in this case only on the basis of disclosure statement of co-accused Nirmal Singh, which is inadmissible in the evidence. Learned counsel contends that no recovery has been effected from the petitioner.

7. Learned counsel for the petitioner states that co-accused Pawan Kumar @ Darvesh @ Mota has already been granted regular bail by a co-ordinate Bench of this Court vide order dated 19.07.2023 passed in CRM-M-19643-2023. Copy thereof has been handed over by learned counsel for the petitioner in Court today, which is taken on record, subject to all just exceptions.

8. Learned counsel for the petitioner contends that the petitioner is

in custody since 01.12.2022 in this case and no other case is pending against him. It is stated that investigation *qua* the petitioner is complete and challan stands presented, thus trial in the case is likely to take long time to conclude and no useful purpose would be served with further incarceration of the petitioner. Learned counsel for the petitioner submits that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court. Learned counsel further submits that the petitioner is also willing to furnish security in the form of Fixed Deposit Receipt (F.D.R.) before the concerned Court, so as to ensure his presence before the Court on each and every date of hearing. Accordingly, prayer for grant of regular bail is made.

9. Per contra, learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence as the recovery effected in the instant case falls in the category of 'commercial quantity', thus bar under Section 37 of the Narcotic Drugs and Psychotropic Substances Act is attracted. It is submitted by learned State counsel that petitioner, along with co-accused, was supplying the contraband and was further distributing commission to the co-accused, hence there is sufficient material on record to *prima facie* show the complicity of petitioner in the crime. Thus, in case he is released on bail then he might influence the witnesses and also abscond and delay the trial.

10. However, learned State counsel fairly submits that petitioner is in custody in this case since 01.12.2022 and there is no other case pending against him. It is conceded by learned State counsel that investigation *qua* petitioner is complete and challan also stands presented. Learned State counsel also concedes that co-accused Pawan Kumar @ Darvesh @ Mota has already been granted regular bail by a co-ordinate Bench of this Court.

11. I have heard learned counsel for the parties and perused the paper book as well as the status report with their able assistance.

12. Concededly, the alleged recovery in this case falls under the category of commercial quantity and bar of Section 37 of the Narcotic Drugs and Psychotropic Substances Act is attracted, however, while dealing with Section 37 *ibid*, the Court is not called upon to record a finding of “not guilty” and it is only required to say that there are reasonable grounds to believe that the accused is not guilty of the offence.

13. The petitioner is in custody since 01.12.2022. Investigation *qua* him in the case is complete and challan stands presented. Concededly, the petitioner was not apprehended at the spot and he has been nominated in this case only on the basis of disclosure statement of co-accused Nirmal Singh and there is also no other case pending against the petitioner. The evidentiary value of the disclosure statement of co-accused would be a debatable issue during the course of trial. Further, co-accused Pawan Kumar @ Darvesh @ Mota has been granted regular bail by a co-ordinate Bench of this Court vide order dated 19.07.2023 passed in CRM-M-19643-2023.

14. In the facts and circumstances of the present case and on an assessment of material on record; and especially, the fact that the petitioner is not involved in any other case under the Narcotic Drugs and Psychotropic Substances Act, I am of the *prime facie* view at this stage that the petitioner may not have committed the alleged offence and he is unlikely to commit an offence under the Narcotic Drugs and Psychotropic Substances Act, while on bail.

15. So far as the apprehension expressed by learned State counsel that the witnesses could be influenced by petitioner, suffice it to state that in the event of any such conduct, the prosecution can always approach the

competent court for cancellation of bail. Accordingly, it is observed that the State/Prosecuting Agency/State police shall be at liberty to observe the behaviour of the petitioner during bail period, and in case it feels that the petitioner is indulging in influencing any of the witnesses or tampering with the prosecution evidence in any manner or otherwise causing interference with the progress of trial, it shall be open for the State/Prosecuting Agency/State police to move the trial Court for cancellation of bail, which shall be decided by the trial Court on merits.

16. In view of the above discussion, present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate concerned. However, the concerned Station House Officer shall be informed about the release of petitioner and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of case/trial and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer. He would also furnish his undertaking to the effect that he will not indulge in any illegal activity. The petitioner shall also appear before the concerned Police Station/Station House Officer on first Monday of every month till the conclusion of trial.

17. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs.1,00,000/- and submit the same with the trial Court. The same would be liable to be forfeited as per law, in case the petitioner remains absent from trial without any sufficient cause.

18. Nothing expressed hereinabove shall be construed to be an

observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

19. The petition is accordingly disposed of.
20. All pending application(s), if any, shall also stand closed.

13.09.2023

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No