

**201 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-43794-2023
DECIDED ON: 03.11.2023**

MOHAMAD DAUD

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Mr. Saurabh Sharma, Advocate for the petitioner.

Mr. Deepak Bhardwaj, D.A.G., Haryana.

VIKRAM AGGARWAL, J

1. This is the second petition moved under Section 439 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") for the grant of regular bail to the petitioner in FIR No.724 dated 30.12.2022 registered under Sections 20, 20B(ii)(c), 58(2) and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station Ladwa, District Kurukshetra.

2. On 30.12.2022, upon receipt of a secret information, a police team intercepted one Sandeep who was stated to be involved in selling of Charas (Sulpha). Upon his personal search (after complying with the statutory provisions), 1kg 150 grams of Charas was recovered. Upon interrogation, he named one Harvinder Singh @ Golu as the person from whom he had purchased the contraband. The said Harvinder Singh @ Golu was arrested who then named one Aman. Upon arrest, Aman named the present petitioner. The present petitioner was accordingly arrested on 16.01.2023 and is in custody since then.

3. Learned counsel for the petitioner submitted that the petitioner has been falsely implicated. It was contended that no recovery had been made from the petitioner. It was further submitted that the petitioner is in custody since 16.01.2023; the petitioner was not named in the FIR; the petitioner was not

nominated as an accused on the basis of a statement of a co-accused who himself was not arrested from the spot; the petitioner had himself joined investigation but was wrongly arrested by the Investigating Agency; final report under Section 173 Cr.P.C. was submitted on 19.06.2023; trial will still take a sufficiently long time and, therefore, no useful purpose would be served by keeping the petitioner in custody any longer. It was further contended that one more person namely Khalil was also arrayed as an accused and the allegation was that the present petitioner had purchased the contraband from him. The said Khalil moved a petition for anticipatory bail before this Court and a Coordinate Bench has granted interim protection in **CRM-M-46301-2023** titled as '*Khalil Vs. State of Haryana*'. Reliance was also placed by learned counsel upon the judgment of the Hon'ble Apex Court in the case of '*Tofan Singh Vs. State of Tamil Nadu*', 2020 AIR (Supreme Court) 5592.

4. On the other hand, learned counsel representing the State of Haryana opposed the bail application stating that the petitioner is a habitual offender. It was submitted that two other cases stand registered against the petitioner under the NDPS Act out of which, in one case i.e. FIR No.293 dated 12.06.2007 registered under Section 18/20 of the NDPS Act, the petitioner was convicted and was sentenced to undergo imprisonment of 13 years. It was submitted that if the petitioner is released on bail, he may try to influence and threaten the witnesses and may also abscond.

5. I have considered the submissions made by learned counsel for the parties. Admittedly, co-accused Sandeep was found in possession of Charas weighing 1kg 150 grams and was accordingly arrested on 30.12.2022. On successive disclosure statements by different co-accused i.e. Sandeep, Harvinder Singh @ Golu and Aman, the present petitioner was nominated as an accused. No recovery was made from him. He was arrested on 16.01.2023 and is

undergoing incarceration since then. Admittedly, he has been arrayed as an accused on the basis of the disclosure statement of a co-accused in pursuance to which no recovery was made. More than nine months have elapsed. Final report under Section 173 Cr.P.C. has been submitted. Trial will still take a sufficiently long time. The pendency of two other cases against the petitioner would not be relevant for the purposes of grant of bail in the present case especially since the recovery in the present case has not been made from the petitioner. Co-accused Khalil, from whom the petitioner is stated to have purchased the contraband, has already been granted interim protection by a Co-ordinate Bench in **CRM-M-46301-2023** titled as '*Khalil Vs. State of Haryana*' and the same is now pending for 06.11.2023. In the considered opinion of this Court, no further incarceration is required to be undergone by the petitioner. The petitioner can be put to stringent conditions but, in the considered opinion of this Court, his liberty should not be curtailed any further.

In view of the aforementioned facts and circumstances, the present petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate Kurukshetra. However, nothing observed hereinbefore shall be construed to be an opinion on the merits of the case.

03.11.2023

Prince Chawla

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No