

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

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CRM M-46483 of 2023

Date of Decision: 20.10.2023

Mohammad Rafiq

...Petitioner

Vs.

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Ajay Kadyan, Advocate, for the petitioner.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the instant petition under Section 439 of the Cr.P.C. with a prayer to grant a regular bail in case FIR No.54 dated 17.01.2023 registered under Sections 20-61-85 of NDPS Act at Police Station Samalkha, District Panipat.

2. The FIR in the present case was registered on the basis of statement made by ASI Sandeep. As per the FIR, a secret informer informed that Sewadan was doing the business of selling *Ganja Patti* in his house and if a raid was conducted, he could be apprehended alongwith his co-accused. After following the due process of law, the police officials raided at the house of Sewadan, where one more man and two women were found alongwith four plastic bags and they were served notice under Section 50 of the NDPS Act. The police joined

the SDO, Public Health at the spot and the search was conducted and on checking, 154 kgs of *Ganja Patti* was from the plastic bags recovered from them and they were apprehended at the spot.

3. Learned counsel for the petitioner contends that the present FIR has been registered against the co-accused, namely, Sewadan, Rachna and Shimla and the petitioner was not involved in the crime in any manner. Learned counsel further contends that there is no averment in the FIR which even remotely connects the present petitioner with the commission of the crime and the petitioner has been falsely involved on the basis of the statement made by the accused in the police custody. Learned counsel further submits that in their disclosure statements, the co-accused had stated that they had bought the contraband from a person Manoj from Orissa whereas the name of the present petitioner is Mohammad Rafiq and a false case has been foisted upon him.

4. On the other hand, learned State counsel has vehemently opposed the prayer made by the learned counsel for the petitioner on the ground that the recovery of the contraband from the co-accused was commercial in nature and the petitioner is actively involved with them and is not entitled for the concession of bail.

5. I have heard learned counsel for the parties and perused the record.

6. The petitioner was arrested in the present case on 05.05.2023 and the investigation is almost complete against him and challan has been presented against him. However, the trial has not progressed against the present petitioner. Apart from that no recovery was effected from the present petitioner and the case is clearly distinguishable from the case of co-accused namely, Sewadan, Rachna and Shimla.

7. In view of the above, without commenting any further on the merits, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate/CJM concerned subject to the following conditions:-

(i) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority.

(ii) The petitioner shall remain present before the Court on the dates fixed for hearing of the case.

(iii) The petitioner shall not absent himself from the Court proceedings except on the prior permission of the Court concerned.

(iv) The petitioner shall surrender his passport, if any, (if already not surrendered), and in case he is not holder of the same, he shall swear an affidavit to that effect.

(v) The petitioner shall also file his affidavit before the concerned Court, mentioning his ordinary place of

residence and number of mobile phone, which shall be used by him during the pendency of the trial. In case of change of place of residence/mobile number, he shall share the details with the concerned Court/learned Trial Court.

(vi) In case, the petitioner involved in any other criminal activity, during the pendency of the trial, it shall be viewed seriously and the prosecution shall be at liberty to move an appropriate application for cancellation of bail granted to the present petitioner.

(vii) The concerned Court may insist two heavy local surties and may also impose any other condition, in accordance with law, while accepting the bails bonds and surety bonds of the petitioner.

(viii) The petitioner shall report every 1st Monday in English calander month before the concerned SHO till the conclusion of the trial and SHO shall mark his presence by making an entry in the Rojnamcha. In case, he does not report on every 1st Monday before the concerned SHO, it shall be viewed seriously and the concession granted to him shall be liable to be cancelled and the State of Haryana shall be at liberty to move an appropriate application in this regard.

20.10.2023

amit rana

(N.S.SHEKHAWAT)

JUDGE

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