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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-47276-2023 (O & M)
Date of decision: 31.10.2023

Mohammad Huzefa

.... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Mohd. Salim, 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.172 dated 14.05.2023 under Sections 21-C, 29-61-85 of the NDPS Act registered at Police Station City Nuh, District Nuh.

2. The brief facts of the case are that secret information was received that Ashiq son of Fakru, Abid son of Lallu and Sachin Garg son of Satyaparkash were doing the work of selling the narcotic substances. They would be coming in their white coloured Ertiga car bearing No. HR 27L 6716 to sell the same in Nuh City. If a *nakabandi* was set-up, they could be apprehended.

Based on the aforementioned facts, a *nakabandi* was set-up and the vehicle was seen coming from Mevali side. However, finding the persons of the police party ahead, the driver of the vehicle tried to turn back, upon which, the vehicle was stopped and the three persons inside were over-

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powered. On enquiry, the driver of the vehicle disclosed his name as Sachin Garg. The person sitting on the rear seat disclosed his name as Ashiq and the person sitting behind the seat of the driver disclosed his name as Abid. The recovery of 291.89 grams of heroin came to be effected from Ashiq.

On the disclosure statement of the abovesaid co-accused, Parveen wife of Abdul Rab @ Sam and Mohammad Huzefa (petitioner) were also found to be involved in the present crime. Mohammad Huzefa was taken into custody and got recovered 98.67 grams of heroin.

Thereafter, the accused are stated to have disclosed the name of one John Mark as an accused. He was also arrested in the present case.

After completion of the investigation against the accused Ashiq, Ajib, Sachin, Mohammad Huzefa, Parveen and John Mark, the report under Section 173(2) Cr.P.C. was submitted.

3. The learned counsel for the petitioner contends that the petitioner is not named in the FIR but only in the disclosure statement of his co-accused. Pursuant to the said disclosure statement only 98.67 grams of heroin was recovered from him which is a non-commercial quantity. As the petitioner was a first-time offender, in custody since 15.05.2023 and none of the 22 prosecution witnesses had been examined so far, he was entitled to the concession of bail, moreso, as the bar under Section 37 of the NDPS Act would not apply to the petitioner.

4. The learned counsel for the State, on the other hand, contends that the petitioner was named in the disclosure statement of his co-accused. Pursuant to his arrest, the recovery of 98.67 grams of heroin had been recovered from the petitioner. Though, the said quantity is non-commercial, however, the petitioner was not entitled to the concession of bail keeping in

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view the seriousness of the allegations. He, however, concedes that the petitioner was a first-time offender, in custody since 15.05.2023 and that none of the 22 prosecution witnesses had been examined so far.

5. I have heard the learned counsel for the parties at length.
6. Admittedly, the recovery from the petitioner is of a non-commercial quantity of contraband. He is stated to be in custody since 15.05.2023 and none of the 22 prosecution witnesses has been examined so far. Therefore, the trial of the present case is not likely to be concluded anytime soon. In this situation, the further incarceration of the petitioner is not required, moreso, as he has clean antecedents.
7. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Mohammad Huzefa is ordered to be released on bail 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 an affidavit each time that he is not involved in any case other than the case(s) referred to hereinabove.
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

October 31, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No