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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-59759-2023 (O & M)
Date of decision: 05.12.2023

Aabid

.... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Munfaid Khan, 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 @ Aabid (petitioner) son of Lallu Khan and Sachin Garg (since granted bail vide order dated 31.10.2023, Annexure P-2) 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,

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upon which, the vehicle was stopped and the three persons inside were over-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 @ Aabid. 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 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, Abid @ Aabid, 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 a perusal of the FIR would reveal that no recovery whatsoever other than a weighing scale had been effected from the petitioner. The recovery of 291.89 grams of heroin had been effected from the personal search of Ashiq son of Fakru. The petitioner had absolutely no connection with Ashiq. As the petitioner was a first-time offender, in custody since 14.05.2023, none of the 22 prosecution witnesses had been examined so far and a co-accused, namely, Sachin Garg had been granted bail, he was entitled to the concession of bail as well.

4. The learned counsel for the State, on the other hand, contends

that the petitioner was found traveling in a vehicle alongwith Ashiq from

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whom the recovery of 291.89 grams of heroin came to be effected. Therefore, the petitioner was not entitled to the concession of bail. He, however, concedes that no recovery of any contraband had been effected from the personal possession of the petitioner, that he is in custody since 14.05.023, none of the 22 prosecution witnesses had been examined so far and that the petitioner was a first-time offender.

5. I have heard the learned counsel for the parties at length.

6. Admittedly, no recovery other than a weighing scale has been effected from the personal possession of the petitioner. Therefore, at this stage, it cannot be said that the petitioner was in conscious possession of the contraband recovered from his co-accused. He is stated to be in custody since 14.05.2023 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, when a co-accused/Sachin Garg has been granted the similar relief.

7. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Aabid 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

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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

December 05, 2023

sukhpreet

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