

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

CRM-M-60782-2023

Date of Decision: 08.12.2023

Abel

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Tarun Singhal, Advocate, for the petitioner.

Mr. Arun William, Assistant Advocate General, Punjab.

Rajesh Bhardwaj, J. (ORAL)

Prayer in the present third petition is for the grant of regular bail to the petitioner in a case FIR No.133 dated 23.10.2021, registered under Sections 21/61/85 of NDPS Act, at Police Station Sadar Rajpura, District Patiala.

Adumbrated facts of the case are that the police while peterolling stopped a bus coming from Rajpura in which a person who was carrying a black colored bag in order to escape, started walking backwards on the road. On suspicion of him carrying contraband, he was stopped by the police officials and on asking he disclosed his name as Sydney Chama resident of Zambia. He was given offer for search of his bag in the presence of gazetted officer and on recording his consent memo, the bag was searched in the presence of DSP. On search of bag, 500 grams of heroin and 400 grams of dry ice (Methamphetamine) was recovered. The accused was arrested and samples of the contraband were taken and sent to FSL. On registration of the FIR, the investigation commenced. During his interrogation, he disclosed that he purchased this contraband from Abel i.e. the petitioner. Thus, the police raided the residential place of the petitioner

situated in Delhi on 28.10.2021 and recovered 270 grams of heroin from his possession. Thus, the present petitioner was also arrayed as an accused and arrested on the same day. The petitioner approached Judge, Special Court, Patiala praying for grant of bail, however, the same was declined vide order dated 04.10.2023. Thereafter, the petitioner approached this Court twice for the grant of bail, however, both the petitions were dismissed as withdrawn. Hence, the petitioner has approached this Court again by way of filing the present third petition for grant of bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in this case. He has submitted that the petitioner has been arrayed as an accused in this case on the basis of the disclosure statement of the co-accused, namely, Sydney Chama. He has submitted that the alleged recovery of 270 grams of heroin was effected totally in violation of Section 50 of the NDPS Act as neither any offer under Section 50 of the NDPS Act was given to the petitioner nor any gazetted officer was associated at the time of effecting the alleged recovery. He submits that the disclosure statement made by the co-accused even otherwise is not admissible. He submits that the petitioner has no criminal antecedents and thus, his false implication is writ large. He also submits that the petitioner is behind bars from the last more than two years and till date there is no progress in the trial. He submits that the prosecution witnesses are intentionally avoiding their presence before the trial Court and the trial Court has also issued warrants for securing their presence. He submits that in the overall facts and circumstances of the case, the petitioner deserves to be granted bail.

Per contra, learned State counsel has opposed the submissions

made by learned counsel for the petitioner. He has submitted that from the co-accused commercial quantity of heroin was recovered and during the investigation, he disclosed about the petitioner. It is submitted that on the basis of the disclosure statement, the residential place of the petitioner was raided and 270 grams of heroin was recovered from his possession. It is also submitted that commercial quantity has been recovered from the conscious possession of the petitioner, thus, there is no merit in the present petition and the same deserves to be dismissed. He has further submitted that out of 12 prosecution witnesses, 2 witnesses have been examined till date and the next date before the trial Court is 03.01.2024. On instructions from ASI Sukhwant Singh, he has submitted that the petitioner has no criminal antecedents.

Heard.

Evidently, the petitioner has been named in this case on the basis of disclosure statement made by the co-accused. On the basis of disclosure statement, raid was conducted in Delhi, where the petitioner was found to be carrying a bag from which 270 grams of heroin was recovered. Though it has been submitted by learned State counsel that search of the petitioner was conducted with his consent, where he posed faith on police officials, however, no gazetted officer was joined at the time of effecting recovery from the petitioner. There is no gainsaying that the petitioner is behind bars from the last more than two years. The petitioner has been named in this case on the basis of the disclosure statement made by the co-accused. As submitted before this Court, the trial Court has also issued warrants for securing the presence of the prosecution witnesses. Speedy trial is a right of every accused. There is nothing on record to show that the

petitioner is involved in any other case. This Court would refrain itself from commenting anything on the merits of the case. However, considering the prayer for grant of bail to the petitioner, this Court is of the view that learned counsel for the petitioner has been able to make out a case for grant of regular bail to the petitioner.

Considering that the trial would take sufficiently long time in its conclusion, the present petition is allowed and the petitioner is ordered to be released on bail to the satisfaction of the concerned trial Court/Duty Magistrate on his furnishing local surety.

It is made clear that the petitioner will not leave the country without prior permission of the trial Court.

Nothing said herein shall be construed as an expression of opinion on the merits of the case.

08.12.2023
sharmila

Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE

: Yes/No
: Yes/No