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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-61493-2023 (O&M)

Date of Decision: 12.12.2023

Mohd. Sayad Alam

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vinod Bhardwaj, Advocate, for the petitioner.

Mr. Vijesh Sharma, Additional Advocate General, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No.107 dated 10.04.2023, under Sections 20 (c), 29 and 61 of NDPS Act, registered at Police Station Kalka, District Panchkula.

2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is in custody from 28.04.2023 and as per the allegations, the police had apprehended one co-accused namely, Manoj from whom there was a recovery of 1290 strips Dicyclomine HCI and thereafter during investigation, he disclosed the name of co-accused namely, Amit Kumar and Manish Kumar and thereafter the aforesaid co-accused Amit Kumar disclosed the name of one Vinod Kumar and thereafter on the disclosure statement of the co-accused Vinod Kumar, the name of the

petitioner was nominated. He submitted that in this way, the petitioner was nominated on the third disclosure statement in sequence of co-accused and submitted that the disclosure statement of a co-accused is not admissible in evidence unless so corroborated by any other link evidence. He submitted that the petitioner is having clean antecedents and is not involved in any other case and there is no other link evidence available except for some telephonic calls with the other co-accused on whose disclosure statement, the petitioner was nominated and submitted that such telephonic conversation cannot become a ground for denial of bail to the petitioner considering his antecedents and the fact that he was nominated on the basis of disclosure statement of co-accused who was also nominated earlier on the disclosure statement of some other co-accused. He submitted that the bar of Section 37 of the NDPS Act will not apply to the petitioner in view of the fact that there had been no recovery from the petitioner even after his arrest and therefore, the petitioner may be considered for the grant of regular bail.

3. On the other hand, Mr. Vijesh Sharma, learned Additional Advocate General, Haryana has submitted that it is correct that the petitioner is in custody from 28.04.2023 and he was nominated at third stage on the disclosure statement of the co-accused. He also submitted that the petitioner is not involved in any other case and has got clean antecedents and also there was no recovery from the present petitioner. He has opposed the grant of bail on the ground that during investigation some telephonic conversation were found between the petitioner and the other co-accused and, therefore, he was having links with the other co-accused.

4. I have heard the learned counsel for the parties.

5. It is a case where the petitioner was arrested on the basis of the

disclosure statement of a co-accused who was earlier nominated on the basis of disclosure statement of some other co-accused and in this way at third stage of disclosure statement, his name was nominated. The petitioner is stated to be in custody from 28.04.2023 and investigation of the case has already been completed and the petitioner is not involved in any other case as per the learned counsel for the parties. This Court is of the view that mere telephonic conversation with the other co-accused itself cannot become a ground of denial of bail to the petitioner and particularly in view of the fact that even as per the learned counsel for the parties, there had been no recovery from the present petitioner. Therefore, the bar of Section 37 of the NDPS Act will not apply to the present petitioner since there was no recovery from him. Furthermore, it is not the case of the State that in case the petitioner is released on bail, then he may influence any witness or may tamper with evidence or may flee from justice.

6. In view of the aforesaid facts and circumstances, this Court is of the view that the petitioner deserves the concession of regular bail.

7. Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

8. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

12.12.2023

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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