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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.779 of 2024 (O&M)

Date of decision : 18.01.2024

Pankaj Sharma @ Kaka

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Manoj R.Sharma, Advocate
for the petitioner.

Mr. Amit Shukla, Asst. A.G., Punjab.

PANKAJ JAIN, J. (ORAL)

1 This petition has been filed under Section 439 Cr.P.C. for grant of regular bail in case F.I.R. No.197 dated 31.10.2023 registered under Section 18 (b) of NDPS Act and Section 27-A added later on at Police Station Dinanagar, District Gurdaspur.

2 As per the case of the prosecution on 31.10.2023 the petitioner along with co-accused Atul were apprehended on the basis of suspicion while riding motor cycle bearing registration No.PB-35-AE-0647. On checking 500 grams opium along with drugs money of Rs.4,000/- is alleged to have been recovered from the tool box of the said motorcycle.

3 Learned counsel for the petitioner submits that the petitioner was only travelling on the motorcycle along with co-accused Atul as pillion rider and had no connection with the said vehicle and thus he cannot be said to be in conscious possession of contraband or drug money which admittedly has been recovered from the tool box of the said motorcycle. He further submits that keeping in view the quantity of contraband i.e. 500

grams opium, the same is less than commercial quantity i.e. 2.5 kgs and thus bar as contemplated under Section 37 of the NDPS would not be attracted. However, deliberate attempt has been made by the prosecution to add Section 27-A of the NDPS Act *vis-a-vis* recovery of Rs.4,000/-. Even though there is no evidence to suggest that the said amount was proceed of the drugs as there is no allegation against the petitioner that he indulged in sale of the same. Further submits that the petitioner has clean antecedents and is not involved in any other case.

4 Custody certificate has been filed. The same is taken on record. As per the custody certificate, the petitioner has undergone actual custody of 2 months & 15 days. He has clean antecedents and is not involved in any other case.

5 Learned State counsel on instructions from Investigating Officer is not in a position to dispute the aforementioned factual assertions based on record.

6 I have heard learned counsel for the parties and have gone through the records of the case.

7 Keeping in view the incarceration suffered by the petitioner and the nature of allegation and since it is highly debatable as to whether the petitioner can be said to be in conscious possession of the contraband recovered from the tool box of the motorcycle on which he was riding as a pillion rider, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :-

- (i) *The petitioner shall not mis-use the liberty granted.*
- (ii) *The petitioner shall not tamper with any evidence oral or documentary during the trial.*
- (iii) *The petitioner shall not absent himself on any date before the trial.*
- (iv) *The petitioner shall not commit any offence while on bail.*
- (v) *The petitioner shall deposit his passport, if any with the trial Court.*
- (vi) *The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.*
- (vii) *The petitioner shall not in any manner try to delay the trial.*

8 Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.

18.01.2024
Pooja sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable :	No