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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
CRM-M-4263-2024 (O & M)
Date of decision: 02.02.2024

Santosh Mahto Petitioner
V/s

State of U.T., Chandigarh ...Respondent

CORAM: HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Ms. Sidhi Bansal, Advocate,
for Ms. Ridhi Bansal, Advocate, for the petitioner.

Mr. Munish Bansal, Public Prosecutor
for the respondent-U.T., Chandigarh.

JASJIT SINGH BEDI, J. (Oral)

The prayer in this petition under Section 439 Cr.P.C. is for the grant of the regular bail to the petitioner in case FIR No.120 dated 29.09.2023 under Sections 20 NDPS Act (lateron added Section 29 of the NDPS Act), registered at Police Station Maloya, Chandigarh.

2. The brief facts of the case are that on 29.09.2023, Ashok Mahto (since granted bail vide order dated 11.01.2024 passed in CRM-M-73-2024) came to be apprehended and the recovery of 990 grams of Charas came to be effected from him.

During the course of investigation, he disclosed that he used to purchase drugs from Santosh Mahto (petitioner). On the basis of the said information, Santosh Mahto was arrested and a recovery of 885 grams of charas was effected from him.

3. The learned counsel for the petitioner contends that the petitioner had been falsely implicated in the present case. There is non-compliance of the mandatory provisions of the Act. The recovery from the

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petitioner was of the non-commercial quantity of contraband as the recovery from the co-accused could not be clubbed with the recovery effected from the petitioner. As the petitioner was in custody since 01.10.2023, none of the 19 prosecution witnesses had been examined so far and that he was a first-time offender, he was entitled to the concession of bail, moreso, when a co-accused/Ashok Mahto had been granted the concession of bail.

4. The learned counsel for the respondent-U.T., Chandigarh, on the other hand, contends that the petitioner is the brother of the co-accused/Ashok Mahto. Therefore, the recoveries from both the accused were to be clubbed together to ascertain the quantum of the contraband recovered. As the total recovery of the contraband was of 01 kg 870 grams of charas which was more than the commercial quantity of 01 kg., the petitioner was not entitled to the grant of bail. He, however, concedes that the petitioner was a first-time offender, in custody since 01.10.2023, none of the 19 prosecution witnesses had been examined so far and that the co-accused has been granted the concession of bail.

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

6. Admittedly, from Ashok Mahto, 990 grams of charas was recovered. Two days thereafter, the recovery of 885 grams of charas was effected from Santosh Mahto. It would be for the Trial Court to adjudicate upon the fact as to whether the recoveries effected from both the accused could be clubbed together. Admittedly, the petitioner is a first-time offender, in custody since 01.10.2023 and none of 19 prosecution witnesses have 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

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petitioner is not required, moreso, when a co-accused/Ashok Mahto has been granted the similar concession.

7. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Santosh Mahto is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

8. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other case/crime other than the case(s) referred to in this order.

9. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- 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.

10. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

February 02, 2024
sukhpreet

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