



CRM-M-8407-2024 (O&M)

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.108+214

Case No. : CRM-M-8407-2024 (O&M)

Date of Decision : September 18, 2024

Surender

.... Petitioner

vs.

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Raman Chawla, Advocate
for the applicant-petitioner.

Ms. Avneet Kaur, AAG, Punjab.

* * *

GURBIR SINGH, J. :

1. **CRM-32951-2024** : This is an application under Section 482 Cr.P.C. for placing on record documents Annexures P-3 to P-8.

1.1 For the reasons mentioned in the application, the same is allowed and Annexures P-3 to P-8 are taken on record, subject to all just exceptions. The application stands disposed of.

2. **Main Case** : Prayer in this petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in FIR No.70 dated 02.06.2023, under Sections 20, 20-C of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as – NDPS Act) (Sections 27, 27-A, 29/61/85 of NDPS Act added later on), registered at Police Station City Budhlada, District Mansa (Annexure P-1).

3. As per the allegations, petitioner Surender himself made a

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disclosure statement before the police while in custody in another FIR No.352 dated 18.05.2023 that he and his partner Ramdhari had sold *ganja* (narcotic substance) in a large quantity to relatives of Ramdhari namely Ramphal and his father Ram Dayal and if raid was conducted at their place, a large quantity of *ganja* was likely to be recovered. On getting this information, the police party headed towards the house of Ram Dayal. On the way, one Kulveer Singh @ Mani was also joined and made part of the raiding party. After completing all the formalities, house of aforesaid Ram Dayal was searched and five bags of 30 kgs each, containing *ganja*, total 150 kgs were recovered. So, FIR in question was registered against all the aforesaid four persons.

4. Learned counsel for the petitioner submits that the petitioner has been involved on the basis of his statement recorded in custody and on the basis of disclosure statement of co-accused that 150 kgs of *ganja*, recovered from the house of Ram Dayal, was supplied by the petitioner and his co-accused Ramdhari. Learned counsel has further submitted that any confession, made by a co-accused in custody, is inadmissible in view of the law laid down by Hon'ble Supreme Court in **Toofan Singh vs. State of Tamil Nadu (Criminal Appeal No.152 of 2013)** – reported as **(2021) 4 SCC 1**, decided on 29.10.2020, wherein it is held that disclosure statement made by a co-accused is not admissible in evidence against another co-accused in terms of Section 67 of the NDPS Act. It has further been contended that the arrest of the petitioner in the present case was effected from 29.07.2023, after bringing him on production warrant. Investigation is

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complete and Challan against the petitioner has already been presented before the concerned Court. Completion of trial will take a long time. So, it has been prayed that the petitioner be released on bail.

5. On the other hand, learned State counsel has vehemently opposed the bail petition, while submitting that in view of gravity of offence, the petitioner is not entitled for concession of bail. The petitioner was arrested in another case i.e. FIR No.352 dated 18.05.2023, under Sections 20-B(II)C, 27-A/61/85 of the NDPS Act, registered at Police Station City Hansi, District Hansi (Haryana) and he was brought by a police official of Haryana NCB Hisar to the Police Station City Budhlada, District Mansa (Punjab). During interrogation, the petitioner disclosed that he and his partner Ramdhari sold narcotic substance, *ganja* in a large quantity to relatives of Ramdhari namely Ramphal and Ram Dayal. The police party, accompanied by the petitioner, raided the house of Ram Dayal, from where *ganja* weighing 150 kg (five bags of 30 kg each), was recovered, which was taken into possession. So, the petitioner does not deserve any relief from the Court.

6. I have heard the rival submissions of learned counsel for the parties and have gone through the record of the case.

7. No recovery has been effected from the conscious possession of the petitioner. The petitioner was in custody in some other case. His disclosure statement was recorded and thereafter, recovery was effected from the house of co-accused Ram Dayal. The petitioner is in custody in this case since 29.07.2023. The statement of accused, while in custody, if

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does not lead to any recovery from the disclosed place which is only known to him, is hit by Section 27 of the Indian Evidence Act (now proviso to Section 23 of BSA Act) and is inadmissible. Although the petitioner is involved in one other case, but that cannot be considered as a ground to deny bail in the present case. Challan in the case has already been presented. The completion of trial will take a long time. Culpability of the petitioner shall be decided during trial of the case.

8. In view of the above discussion, it is held that no useful purpose would be served by keeping the petitioner behind bars for a long time. Accordingly, without commenting upon the merits of the case, the present petition is allowed and the petitioner is directed to be released on regular bail, on his furnishing bail bonds/surety bonds, to the satisfaction of learned Trial Court/Duty Magistrate concerned. The petitioner shall also abide by the following conditions :-

- 1. The petitioner shall surrender his passport and shall not leave the country without the prior permission of the Trial Court.*
- 2. The petitioner shall give his mobile number to the Trial Court and get the same registered, on which SMS shall be received from the CIS and shall not change his mobile number during pendency of the case.*
- 3. The petitioner shall not change his residence without prior intimation to the concerned Police Station and the Trial Court.*
- 4. The petitioner shall appear before the Trial Court on each and every date of hearing.*

9. The Trial Court is at liberty to impose any other condition that it may deem appropriate. It is further clarified that in case of default of any of the conditions, the concerned Court is competent to cancel the bail granted to the petitioner.
10. However, nothing observed herein above shall be construed to be an expression of opinion on the merits of the case. The observations recorded above are only for the purpose of deciding the present bail petition.
11. Pending applications, if any, shall stand disposed of along with the present petition.

September 18, 2024

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(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.