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2024:PHHC:048136

CRM-M-9719-2024
Date of decision : 09.04.2024

Versus

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Mr. Mohit Kapoor, Sr. DAG, Punjab.

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.115 dated 14.07.2023 registered for the offences punishable under Sections 21, 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') at Police Station Gharinda, District Amritsar Rural.

3. As per the case of the prosecution the petitioner along with co-accused(s) was travelling in the car. Car was signaled by the police. Driver tried to turn the same and run away from the spot. The three occupants of the same however were apprehended including the present petitioner who was sitting on conductor seat. From the dashboard of the car 200 grams of *heroin* was recovered leading to registration of the present FIR.

4. Counsel for the petitioner submits that it's a case involving non-commercial quantity. The petitioner is behind bars for more than 8 months and 27 days i.e. almost 9 months. Investigation stands concluded and Challan stands presented. More so, the witnesses being the official, there can't be any apprehension that the petitioner shall tamper with the evidence.

5. State Counsel opposes the bail plea on the ground that the petitioner is a prior convict under the NDPS Act in FIR No.24 dated 18th of February, 2020 registered at Police Station Chabhal wherein he has been awarded six months R.I. and is also facing another case in FIR No.64 dated 10th of September, 2019 registered at Police Station Kacha Pakka.

6. Faced with the situation, counsel for the petitioner refers to judgment dated 9th of October, 2023 passed by Judge, Special Court, Tarn Taran in FIR No.24 dated 18th of February, 2020 to submit that it was the case wherein the petitioner was found to be in possession of 35 grams of *heroin* which is less than commercial quantity. He further refers to Annexure P-2 to submit that likewise in FIR No.64 dated 10th of September, 2019 also the petitioner was found to be in possession of 152 grams of *heroin* which is less than commercial quantity. He refers to the present FIR to submit that the present case also involves recovery of less than commercial quantity and would not attract Section 37 of the NDPS Act.

7. State Counsel is not in position to dispute the aforesaid assertion being matter of record.

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

9. Without commenting on the merits of the case, keeping in view the incarceration already suffered by the petitioner and the fact that the present case does not involve commercial quantity and thus rigors of Section 37 would not be attracted, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

10. 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 cellphone number without permission of the trial Court.
- (vii) The petitioner shall not in any manner try to delay the trial.

11. In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.

12. Needless to say that anything observed hereinabove shall not be

construed to be an expression of opinion on the merits of the case.

April 09, 2024		(Pankaj Jain)
Dpr		Judge
	Whether speaking/reasoned	: Yes/No
	Whether reportable	: Yes/No