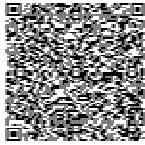


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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

285

CRM-M-10642-2024 (O&M)
Date of decision: 07.08.2024

Gagan alias Sonu ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Aditya Sanghi, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition, filed under Section 439 Cr.P.C., is for grant of regular bail to the petitioner in FIR No.124 dated 01.06.2023, registered for the offences punishable under Sections 15/15(C)/29 of NDPS Act No.61 of 1985, at Police Station Ding, District Sirsa.
2. Vide order dated 28.05.2024, passed by this Court, the petitioner was ordered to be released on interim bail. The operative part of the said order reads as under:

“...As per the case of the prosecution, the petitioner alongwith his co-accused namely Vinod Kumar @ Bablu were arrested after having been found in conscious possession of 60 kg of Doda post contained in three plastic bags kept in Honda City Car bearing No.HR26AQ-2937. Petitioner claims false implication.

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It has been contended that the petitioner is neither the owner of the car nor was driver. Rather on 31.05.2023, petitioner was apprehended by police and some bags were recovered from the house of one Harish s/o Balwant. The entire occurrence was captured in CCTV camera. Representations were made to the higher authorities, yet no investigation was carried out on that aspect.

Status report by way of affidavit of Subhash Chand, HPS, Deputy Superintendent of Police, Sirsa was filed on 02.05.2024. The receipt of representations by the family of the petitioner was admitted in para 12 and 13 of the status report which alleged as under:-

“12. That with regard to the status of the application dated 28.11.2023 (as alleged in para no.9 of the petition) stated to have been moved by the Vijay Bala wife of the petitioner, it is submitted that the said application has been entrusted to Worthy Additional Superintendent of Police, Sirsa for enquiry thereon. After the enquiry by the Worthy Addl. S.P, Sirsa, some negligence in duty work was found on the part of the Investigating officer, regarding which departmental enquiry has been ordered by the Worthy S.P, Sirsa vide order dated 27.4.2024. Copy of the order dated 27.4.2024 is attached herewith as Annexure R-2. 13. That the petitioner has further alleged about the recovery of the bags from the house of Harish son of Balwant, resident of Model Town Fatehabad and has relied upon the footage of the CCTV Camera. In this regard it is submitted that the enquiry with regard to the CCTV footage is yet to be conducted as after the possession of the concerned DVR etc. the same would be got verified from the competent Authorities in order to find out the

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genuineness of the alleged footage on which relied upon by the petitioner.”

On 08.05.2024, following order was passed:-

“Status report by way of affidavit of Subhash Chand, HPS, Deputy Superintendent of Police, Sirsa on behalf of respondent-State has been filed in the Registry. The same is taken on record. Counsel for the petitioner points out to para Nos. 12 and 13 thereof. Respondents are directed to conclude the inquiry with regard to CCTV footage as stated in para 13 within a week and to submit the report. Apart from that the proceedings with respect to the departmental enquiry as stated in para 12 shall also be produced on the next date of hearing, fixed as 28.05.2024.”

Fresh status report by way of affidavit of Subhash Chand, HPS, Deputy Superintendent of Police, Sirsa dated 22.05.2024 has been filed today in Court by learned State Court. The same is taken on record. Para 11 to 14 which are relevant read as under:-

“11. That thereafter a letter dated 13.5.2024 was received from the office of Sr. Scientific Officer, CFL, Panchkula who has conveyed that five exhibits namely: Two DVRs, alongwith their HDDs, Two Hard Disks, and One Pen drive were received in this concerned. The authorities of CFL Haryana, Panchkula further demanded some of the hard disks and submitted that case will be examined at the earliest after receiving the above mentioned Hard Disks.

12. That in compliance of the demand by the Authorities of CFL Haryana, Panchkula, the required material ie SATA Hard Disk (Internal), (ii)

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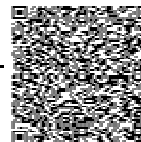
SATA Hard Disk (Internal) & (iii) USB SSD Hard Disk (Branded) required by CFL, Haryana was purchased from the market and then the same were deposited with CFL, Haryana through L/C Sonia No.1503/Sirsa, P.S Ding on 15.5.2024. However item demanded at serial no.3 (vide letter dated 13.5.2024) were sent back by the office of CFL, Panchkula being the same is not as per demand. The deposited item/2(quantity) USB SSD Hard Disk (4 TB each) were deposited with the CFL Authorities, through L/Const. Sonia No. 1503/Sirsa on 20.5.2024 vide letter bearing no.133 dated 19.5.2024 and same has been acknowledged as received by the CFL Authorities vide their receipt dated 20.05.2024.

13. That as such in compliance to the order dated 8.5.2024, it is submitted that all the records of the CCTV footage as identified by the complainant/Vijay Bala (wife of the accused), Sunita mother of the accused alongwith original DVRs/NVRs & Hard Disk have been taken into possession & the Pen drive provided by the complainant party, have been deposited with CFL, Haryana for analysis and report thereof about the originality and identification etc. After receiving the report further investigation, as per law, will be carried out accordingly.

14. That regarding the departmental enquiry, the delinquent officials have been charge sheeted and after defence written statement of the delinquent officials, appropriate action under the Service Rules/PPR will be taken accordingly.”

In view of above, it is not denied that there is a CCTV footage as claimed by the petitioner and the same has now

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been sent to CFL, Haryana for analysis, for which the report is awaited.

State has also initiated action against the relevant officials and has chargesheeted them. Petitioner is behind bars for more than 11 months and 27 days and has clean antecedents.

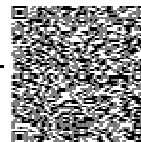
In view of above, petitioner is ordered to be released on interim bail till the next date of hearing.

Adjourned to 06.08.2024.”

3. In compliance with the previous orders, status report has been filed by respondent along with FSL report dated 12.06.2024. A perusal of the FSL report shows that on analysis of the samples deposited with the laboratory, no CCTV footage could be retrieved from the same. Even on the analysis of the data contained in the pen drive, it has been found that the same was compressed/converted and was not in its original form. Hence, no opinion could be given regarding its original source of creation/transmission. It is also reported that no opinion could be given regarding the authenticity/integrity of the video files as no video of the relevant period has been found from any of the four hard discs, which were supplied.

4. Learned counsel for the petitioner in addition to his previous arguments has further argued that that the petitioner has been granted interim bail, vide order dated 28.05.2024 and he has not misused the same. The investigation has since been completed and *challan* has been presented. The trial is likely to take a long time. No useful purpose would be served by sending the petitioner into custody again. It is, thus, argued that the petition deserves to be allowed.

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5. Learned State counsel, in terms of the status report, has argued that there are serious and specific allegations against the petitioner. His complicity in the subject crime has been established during investigation. The plea as taken by the wife of the petitioner in her representation dated 28.11.2023 regarding false implication of the petitioner could not be established in view of the FSL report. The recovery effected from the petitioner and co-accused Vinod Kumar @ Bablu falls under the commercial quantity. Trial is going on at a proper pace. It is argued that if the petitioner is allowed to remain on bail, he may tamper with the prosecution evidence or may indulge in similar offences. It is, thus, argued that the petition is liable to be dismissed.

6. I have learned counsel for the parties at considerable length and have also perused the material placed on record.

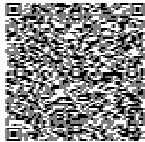
7. As per allegations, the petitioner was apprehended by the police party along with co-accused Vinod Kumar @ Bablu on 01.06.2024 and recovery of 60 kgs. of Doda post (poppy straw) was effected from them. The petitioner claimed his false implication. He claimed that in fact, he was picked up on 31.05.2023 by the police and some bags were recovered from the house of co-accused Harish and the entire occurrence was recorded in CCTV camera. The said CCTV footages of the relevant period were sent to CFL, Haryana for analysis. The petitioner was released on interim bail by this Court awaiting the FSL report, which has now been received. As per FSL report, no CCTV footage could be retrieved from the exhibits sent to laboratory. Even the authenticity and integrity of the videos has been questioned. With regard to

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data contained in the pen drive, it is reported that the same was compressed/converted and was not in its original form. On going through the previous orders, it is apparent that the petitioner was granted interim bail only on the possibility of his false implication but after receipt of FSL report, the same could not be established. The recovery effected from the petitioner and co-accused obviously falls within the commercial quantity. Co-accused Harish has also been arrested on 21.05.2024 and he has suffered a disclosure statement, wherein he stated that he has friendship with co-accused Vinod Kumar @ Bablu and petitioner. They along with one Ramesh had formed a gang and used to sell poppy husk to others. He also stated that he had provided his car bearing registration number HR-26-AQ-2937 to co-accused Vinod Kumar @ Bablu and the petitioner for sale of 60 kgs. of poppy husk. The apprehension raised by learned State counsel that the petitioner, if allowed to remain on bail, can tamper with the prosecution evidence or may indulge in similar offences cannot be stated to be unfounded. More so, while deciding a bail petition filed under Section 439 of Cr.P.C., this Court is not supposed to conduct a mini trial as the innocence of the petitioner or otherwise can only be proved by adducing evidence before the trial Court and there is nothing on record to show that there would be any undue delay in conclusion of trial. Keeping in view the discussion as made above, the quantity of the contraband allegedly recovered from the petitioner, the quantum of sentence which the conviction may entail and the attendant facts and circumstances of the case, I am of the considered opinion that the petitioner does not deserve to be granted benefit of regular bail, at this stage. Hence, the petition is dismissed. The petitioner is directed to surrender before the jail authorities forthwith.

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8.

It is made clear that the observations made hereinabove are only for the purpose of deciding the present petition and the same shall not be construed as an expression of opinion on the merits of the case.
9.

The Registry is directed to send a copy of this order to the trial Court and to the Superintendent of concerned jail.

07.08.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No