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2024:PHHC:034893

CRM-M-11739-2024
Date of decision: 12.03.2024

Versus

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

PANKAJ JAIN, J. (ORAL)

2. FIR was registered on the basis of secret information that two persons namely Dev Dass and Sandeep are indulging in illegal trade of *ganja*. They were arrested. Sandeep nominated the present petitioner as the source of *ganja* in his statement made while in police custody. No recovery has been made from the present petitioner

though 2 kg. 300 grams of *ganja* is alleged to have been recovered from the two main accused namely Dev Dass and Sandeep,

3. Counsel for the petitioner submits that the petitioner has been nominated merely on the basis of disclosure and apart therefrom there is no incriminating evidence against the petitioner. Reliance is being placed upon the dictum of law laid down by Apex Court in **Tofan Singh vs. State of Tamil Nadu, (2021) 4 SCC 1** to submit that the sole statement made while in police custody by the co-accused being a weak piece of evidence is not sufficient to drive home the guilt of the petitioner. He further submits that the quantity recovered from the co-accused is also less than commercial and thus rigors of Section 37 of the NDPS Act would not be attracted.

4. Per contra, State Counsel however opposes the bail plea on the ground that the petitioner is a habitual offender and has another case under the NDPS Act.

5. Faced with the situation, counsel for the petitioner submits that in that case also the quantity involved was less than commercial and the petitioner stands admitted to bail by Special Judge (NDPS)-02, Dwarka Courts, New Delhi vide order dated 7th of February, 2024.

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

7. Without commenting on the merits of the case, keeping in

view the fact that the Challan stands presented without there being FSL report, the petitioner has been nominated on the basis of disclosure made by co-accused that too while in police custody and no recovery has been made from the petitioner in this case, 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.

8. 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.

9. 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.

10 Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

March 12, 2024		(Pankaj Jain)
Dpr		Judge
	Whether speaking/reasoned :	Yes/No
	Whether reportable :	Yes/No