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2024:PHHC:048158

CRM-M-14881-2024
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.29 dated 25.02.2023 registered for the offences punishable under Sections 18, 29, 61, 85 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') at Police Station Tapa Mandi, District Barnala.

3. Senior Counsel representing the petitioner relies upon order dated 12th of March, 2024 passed in CRM-M No.3865 of 2024 wherein co-accused Chaina Ram was granted bail observing as under:

“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.29 dated

25.02.2023 registered for the offences punishable under Sections 18, 29, 61, 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') at Police Station Tapa Mandi, District Barnala.

2. Custody Certificate of the petitioner has been filed today in Court. The same is taken on record.

3. As per the contents of the FIR it has been alleged as under :

“xxx At about 04.40 p.m. when the Police Party reached near Gate No. 2 of Outer Grain Market, Tapa we saw two clean shaven persons coming from the side of Village Tajo Ke on foot. On seeing the Police Party one young man who was having a Satchel of blue shade on his back gave it to his other companion and both of them tried to turn towards the side of gate of Grain Market. On suspicion I stopped my vehicle and overpowered both of them with the help of my companions. I asked for their identity at which the first person disclosed his name as Chaina Ram Jatt son of Girdhari Lal Naga, resident of Raghunathpura xxx”

4. Ld. Senior Counsel representing the petitioner submits that in a novel way the petitioner has been implicated despite the fact that no recovery has been made from the petitioner. Recovery is from a blue sachet which admittedly at the time of search and seizure was held by co-accused Mukesh Kumar. He further submits that the petitioner has clean antecedents and has no other case under the NDPS Act. Petitioner is behind bars for more than 1 year and 13 days. Reliance is being placed upon the various orders passed by Coordinate Benches of this Court in **CRM-M-53415-2021** titled as **Jang Kanwar vs. State of Punjab** decided on 19th of January, 2022, **CRM-M-37645-2021** titled as **Hari Yadav @ Hariya vs. State of Punjab** decided on 11th of February, 2022 and **CRM-M-57485-2022** titled as **Ranjit Singh @ Ranjit Kumar** decided on 10th of January, 2023.

5. State Counsel contends that in view of the fact that the commercial quantity has been recovered from the co-accused from a bag which was as per the allegations earlier being carried by the present petitioner, the petitioner cannot escape from his criminal liability and rigors of Section 37 of the NDPS Act would be attracted. However, he does not dispute that the challan stands presented on 13th of June, 2023 and charges have been framed on

19th of August, 2023 and by now, none out of 10 cited witnesses could be examined.

6. Having heard rival contentions of counsels for the parties and after going through records of the case, without commenting on the merits thereof, keeping in view the incarceration suffered by the petitioner and the fact that in almost six months none of the witness could be examined, 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.

7. 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.

8. 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.

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

4. Relying upon the aforesaid order, he submits that even as per the case of the prosecution the blue sachet was handed over to the petitioner

by co-accused Chaina Ram who already stands admitted to bail. He further submits that the challan already stands presented and up to the date of filing of the present petition, no witness was examined and thus trial is not likely to conclude in the near future.

5. Per contra, State counsel opposes the bail plea submitting that it's a case of recovery of 'commercial quantity' and that during the pendency of the present petition, 2 out of 10 cited witnesses already stand examined. Though State Counsel is not in position to dispute the fact of Chaina Ram having been admitted to bail.

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

7. In view of above, without commenting on the merits of the case and keeping in view the incarceration already suffered by the petitioner, 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.
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- (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.

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