



CRM-M No. 30100 of 2024 1

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

238/2

CRM-M No. 30100 of 2024 (O&M)
Date of Decision: 12.09.2024

Kirpal Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Abhimanyu Tewari, Advocate,
for the petitioner.
(Through Video Conference).

Ms. Neha Sonawane, DAG, Punjab.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of bail pending trial to the petitioner in FIR No.07 dated 07.01.2023, under Sections 21(c), 23 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') registered at Police Station Sadar Fazilka, District Fazilka.

2. Above FIR was registered against accused-Paramjeet Singh @ Pamma and Hameet Kamboj with the allegations that 31.200 Kgs. of *heroin* was smuggled from Indo-Pak border and petitioner had the knowledge of entire transaction on the basis of Whatsapp calls retrieved by the police during investigation.

3. Contends that petitioner was in custody from 04.01.2021 till

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02.05.2023 and the alleged recovery is stated to have been effected in the present case on 07.01.2023. Further contends that petitioner was not named in FIR; rather nominated on basis of disclosure made by co-accused Paramjit Singh @ Pamma.

4. *Per contra*, learned State counsel on instructions from the quarter concerned is not able to dispute the above factual position, however, she opposed the prayer on the premise that petitioner actively participated in the commission of crime.

5. Heard both sides and perused the paper-book.

6. On a specific query, learned State counsel is not able to point out or show any material from the police file to connect the petitioner with the alleged recovery of contraband or commission of the crime, except the disclosure made by co-accused Paramjit Singh @ Pamma. Even learned State counsel is not able to show any whatsapp and or call record for complicity of the petitioner.

7. As no contraband was recovered from petitioner; rather he was in custody on that day and more particularly State has completely failed to show any material regarding his complicity; therefore, petitioner cannot be said to be guilty for the purposes of granting bail in terms of Section 37 of the NDPS Act.

8. That apart, to a specific query, it is not the stand of prosecution that in case petitioner is released on bail, he is likely to commit the similar offence; thus in view of the above, this Court records twin-test satisfaction in favour of the petitioner, as per Section 37 of the NDPS Act.

9. Concededly, there is no recovery alleged against the petitioner; nor he was present on the spot. Petitioner is in custody in this case since



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date; therefore, trial is likely to take sufficient long time and as such, further incarceration of the petitioner would not serve any purpose.

10. Consequently, present petition is **allowed**; petitioner shall be admitted to bail on furnishing bail/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

11. Petitioner shall appear on each & every date of hearing and to fully co-operate with the learned trial Court without seeking any unnecessary adjournment(s).

12. The above observations may not be construed as an expression of opinion on the merits of the case.

13. It is clarified that in case there is recurrence or any misuse of concession of bail on the part of the petitioner, State would be at liberty to move an appropriate application for recalling of this order.

Pending application(s), if any, shall also stand disposed off.

12.09.2024
Rajeev (rvs)

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes