

CRM-M-31601-2023
Date of decision: 18.01.2024

...PETITIONER

V/S

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vikas Bishnoi, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Harvana.

HARPREET SINGH BRAR J. (ORAL)

This is the first petition filed under Section 439 of Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.337 dated 22.09.2019 registered under Section 18 of NDPS Act, 1985 (during investigation Sections 18(b) and 27-A of NDPS Act were added) at Police Station Bhuna, District Fatehabad.

2. Learned counsel for the petitioner *inter alia* contends that the petitioner is not named in the FIR and he has no connection whatsoever with the alleged offence. Admittedly, the alleged contraband of 2.5 kgs. of Opium was recovered from the possession of co-accused Bhiyan Ram and petitioner has been nominated in the present case only on the basis of disclosure statement suffered by the co-accused, while in police custody and the alleged recovery of Opium falls within the ambit of non-commercial quantity. Learned counsel relies upon Section 2(viia) of NDPS Act which defines 'commercial quantity' in relation to the narcotic drugs and psychotropic substances that provides any quantity greater than the quantity specified by the Central

Government by its notification in the Official Gazette. The petitioner is behind the bars since 06.04.2023 and co-accused from whose possession, the alleged contraband was recovered has been granted the concession of regular bail by this Court vide order dated 13.07.2020 (Annexure P-2).

3. Per contra, learned State counsel opposes the prayer made by the petitioner on the ground that the petitioner is a habitual offender and is involved in two more cases under the NDPS Act, however, he could not controvert the fact that the contraband recovered in the present case, falls under the ambit of non-commercial quantity and the co-accused from whose possession the contraband was recovered, has been enlarged on regular bail.

4. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner has already suffered the incarceration of 09 months and 07 days and the co-accused has been granted the concession of regular bail by this Court vide order dated 13.07.2020 passed in case bearing No.CRM-M-48655 of 2019. Culpability, if any, would be determined at the time of the trial. No useful purpose would be served by further detention of the accused-petitioner.

5. Keeping in view the law laid down by the Hon'ble Supreme Court of India in '**Prabhakar Tewari Vs. State of U.P. and another**' 2020 (1) R.C.R. (Criminal 831) and '**Maulana Mohd. Amir Rashadi Vs. State of U.P. and Another**', 2012 (2) SCC 382, the involvement of the petitioner in other cases would not be a ground to refuse grant of concession of regular bail.

6. In view the above, the present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial and the petitioner-Deva Ram is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of

Illaqa Magistrate/Trial Court.

7. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

January 18, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |