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

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CRM-M-32842-2024 (O&M)
Date of decision: 19.10.2024

Dharampal Singh @ Moosi**...Petitioner**

Versus

State of Punjab**...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Gaurav Goel, Advocate
for the petitioner.

Mr. Satjot Singh, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. This petition has been filed by the petitioner under Section 439 of Cr.P.C. seeking regular bail in case bearing FIR No. 154 dated 19.09.2023, registered under Sections 22, 27 and 29 of the NDPS Act, 1985 at Police Station Barnala, District Barnala.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that on 19.09.2023, co-accused Gurmail Singh @ Goli was apprehended by a police party and recovery of 950 loose intoxicant tablets was effected from him. During the course of investigation, the disclosure statement of aforesaid co-accused was recorded, wherein he disclosed that the recovered tablets were supplied to him by the present petitioner. On the basis of the said disclosure, the petitioner was arrested on 22.12.2023 and recovery of 253 loose intoxicant tablets was effected from him. After completion of necessary investigation and usual formalities, *challan* under Section 173 of Cr.P.C. was presented in the Court and presently, the petitioner is facing trial

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for commission of aforesaid mentioned offences. He had moved an application before the trial Court for grant of regular bail but the same had been dismissed, vide order dated 29.01.2024.

3. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. The petitioner was not found at the spot and has been involved in this case on the basis of the disclosure statement made by the co-accused, which is not admissible in law against the petitioner. To fortify this argument, learned counsel for the petitioner has relied upon the authority of Hon'ble Supreme Court rendered in ***Tofan Singh vs. State of Tamil Nadu : (2021) 4 SCC 1***. It is further argued that the subsequent recovery shown to have been effected from the petitioner does not fall under the commercial quantity. More so, in view of the ratio of law as laid down by Hon'ble Supreme Court in ***Amarsingh Ramjibhai Barot vs. State of Gujarat : 2005(7) SCC 550***, the recovery effected from the aforesaid co-accused cannot be added to bring it within the ambit of commercial quantity. It is further argued that the petitioner is in judicial custody since 22.12.2023. The trial is likely to take a long time. No useful purpose would be served by keeping him in custody anymore. It is, therefore, urged that the petition deserves to be allowed.

4. Custody certificate of the petitioner has been filed by the respondent-State. Learned State counsel, in terms of the custody certificate as well as status report, has argued that though the petitioner was nominated in this case on the basis of the disclosure suffered by the co-accused but during the course of investigation, his involvement in the subject crime was duly established. The petitioner had supplied the intoxicant tablets to the aforesaid

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co-accused, who was arrested at the spot. Even 253 loose intoxicant tablets were subsequently recovered from the petitioner. Trial is going on at proper pace. It is, thus, argued that the petition is liable to be dismissed.

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

6. The petitioner has been nominated in this case on the basis of the disclosure made by co-accused Gurmail Singh @ Goli, from whose custody, recovery of 950 intoxicant tablets (*Alporazolam*) was effected, which falls under the commercial quantity. The allegation against the petitioner is that he had supplied the recovered tablets to the co-accused. After the arrest of the petitioner on 22.12.2023, 253 intoxicant tablets of Alprazolam were recovered from him. As per FSL report, the average weight of one tablet was found to be 176 mg, which means the total weight of the tablets recovered from the petitioner was $253 \times 176 = 44528$ mg or 44.5 grams. The said quantity of the contraband obviously does not fall under the commercial quantity. In view of ratio of law as laid down in *Amarsingh's* case (*supra*), it will be a question of debate as to whether the recovery effected from the co-accused can be taken into consideration against the present petitioner and the same can be decided by the trial Court only at the final conclusion of trial after appreciating the entire material and evidence placed on record before it. The petitioner is in custody since 22.12.2023. The trial is likely to take time. Keeping in view the discussion as made above, I am of the considered opinion that no useful purpose would be served by keeping the petitioner in custody anymore. Accordingly, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing personal/surety bonds to the

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satisfaction of the trial Court/Duty Magistrate concerned. However, it will be open for the prosecution to apply for cancellation of bail in case the petitioner is found involved in any other subsequent case.

7. It is made clear that any observation made herein above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

19.10.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No