



CRM-M-35787-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(210)

CRM-M-35787-2024
Date of Decision:-05.12.2024

Anil Joshi @ Rohit Joshi

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ALOK JAIN

Present: Mr. Ruhani Chadha, Advocate
for the petitioner.

Mr. Anil Bansal, DAG, Punjab.

ALOK JAIN, J. (Oral)

1. On the oral request of the counsel for the petitioner, the present petition is treated to be under Section 483 of the BNSS 2023.

2. The present second petition has been filed *inter alia* praying for grant of regular bail to the petitioner in case FIR No.19 dated 05.02.2022, registered with Police Station Shahpur Kandi, under Sections 18, 21, 22 and 29 of the NDPS Act and Sections 25 and 27 of the Arms Act, 1959, District Pathankot.

3. In compliance of the order dated 06.11.2024, ASI Jagdish Singh and ASI Naresh Kumar are present in the Court and have clarified that FIR No. 19 dated 05.02.2022 registered at Police Station Shahpur Kandi, in which the petitioner was found in conscious possession of the



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intercepted under the Police Station Sujanpur, wherein, two accused were arrested who have also nominated the petitioner of being involved in the said trade. It has been clarified that the petitioner is nominated in FIR No. 19 dated 15.02.2022, Police Station Sujanpur, under Section 29 of the NDPS Act on the basis of disclosure statement of the main accused.

4. Learned counsel for the petitioner has re-asserted the contention that the consent memos and other documents as required under Sections 42 and 50 of the NDPS Act were typed and printed to which the counsel for the State on instructions from the concerned Officer has submitted that the laptop and printer were available in the vehicle which was available with them at the time of search and since the *ruqa* has been sent, the FIR number was made available, therefore, the same was duly typed and print out was taken.

5. Learned counsel for the petitioner has heavily relied upon the judgment passed by the Co-ordinate Bench of this Court in the case of ***“Omkar Singh @ Oma Vs. State of Punjab”*** in ***CRM-M-3395-2024*** and the order passed by the Hon’ble Apex Court in the case of ***“Nirmal Singh Vs. State of Punjab”*** in ***Criminal Appeal No. 1590/2018***, to substantiate his arguments and held para 9 of ***Omkar Singh @ Oma (supra)*** which reads as under:

9. *“No doubt that the contraband as allegedly recovered from the possession of the petitioner falls in the commercial category. However, serious doubts have been raised by learned counsel for the petitioner regarding the alleged recovery, in view of the fact that FIR number finds mention not only in the notice under Section 50 of the NDPS Act and*



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seizure memo but also in the report sent under Section 42 of the NDPS Act. Annexure P-2 is the report under Section 42 of the NDPS Act; Annexure P-3 is the notice under Section 50 of the NDPS Act, whereas Annexure P-4 is the seizure memo. All these documents clearly contain the FIR number, though these documents were purported prepared prior to registration of the FIR. In the status report, the said fact is not disputed that the documents as aforesaid contain the FIR number but it is explained to be due to the sheer negligence of the Investigating Officer and for that, departmental enquiry has been initiated against him. The said admission on the part of the respondent-State in itself creates suspicion on the entire prosecution case regarding the alleged recovery from the petitioner.”

6. In the present case also, it is not in dispute that the documents as required under Sections 42 and 50 of the NDPS Act did contains the FIR number but nonetheless counsel for the petitioner asserts that the petitioner is in custody for the last 2 years, 9 months and 20 days and has clean antecedents.

7. Learned counsel for the State has submitted that the petitioner does not has clean antecedents as he is involved in one more case under NDPS Act and two cases i.e. under Section 52-A and 52-B of the Prisons Act. As regards the other cases mentioned in the custody certificate, it is submitted that in those cases, the petitioner have been called on production warrants.

8. At this stage, learned counsel for the petitioner submits that there is no flight risk *qua* the petitioner as he is a permanent resident of Sultanwind Road, District Amritsar and is ready to deposit an FDR of



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trial and ensures that he shall not procrastinate the trial and shall not absent himself from the proceedings without any cogent reason.

9. Heard learned counsel for the parties at length. Although the recovery is on the commercial side, however, the custody of the petitioner is more than 02 years and only 09 witnesses out of 19 have been examined, 03 have been given up and 07 are yet to be examined.

10. Having regards the facts and circumstances as noted above and without commenting anything further on the merits of the case, and the fact that the trial may take time to conclude, therefore, no useful purpose would be served by keeping the petitioner in custody, hence, the petitioner is entitled to the grant of the concession of regular bail.

11. In view of the above, the present petition stands allowed and in light of the voluntary statement made by the petitioner to deposit a sum of Rs. 1,00,000/- in the shape of an FDR of Nationalized Bank, and the petitioner is directed to do the same and subject to the above, the petitioner be released on bail if not required in any other case on furnishing bail bonds and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned and in case, the petitioner absent himself from the proceedings, the said amount shall be forfeited in favour of the State. The petitioner shall, however, be released on the following conditions:

- i. The petitioner shall declare his ordinary place of residence and the mobile number used by him.
- ii. The petitioner will not switch off his mobile and in case of any technical glitch, he has to give an alternate number, which will be available in his absence.
- iii. The petitioner will mark his presence before the SHO concerned,



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after every 15 days and in case the SHO refuses to mark his presence, he is permitted to make an application before the Illaqa Magistrate, concerned.

- iv. The petitioner will not leave the country without the prior permission of the Court, for which he will submit the copy of his passport also. However, in case the petitioner does not possess a passport, then he shall file an undertaking to the said effect before being released.

The petitioner shall abide by the terms and conditions as imposed in addition to Section 483 of BNSS, 2023.

12. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and this order shall not be considered as parity qua any other co-accused in any manner whatsoever.

13. It is further made clear that, in case, the petitioner is found involved in any such activity once again, the State is at liberty to promptly move an appropriate application for cancellation of bail detailing out the circumstances and violation of conditions of bail.

13. The amount of Rs. 1,00,000/- shall be kept as an FDR and in, case the petitioner is held guilty and any fine is imposed upon him, the same shall be adjusted from the said amount and in case, the petitioner is acquitted in the present FIR, the said principal amount shall be refunded to the petitioner within four weeks from the date of order of acquittal, if any.

(ALOK JAIN)
JUDGE

December 05, 2024

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Whether speaking/reasoned:-
Whether Reportable:-

Yes/No
Yes/No