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

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CRM-M-42913-2024 (O&M)
Date of decision: 13.09.2024

Ajay Kumar ...Petitioner

Versus
State of Punjab ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Arjun Veer Sharma, Advocate
for the petitioner.

Mr. A. S. Samra, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The instant one is the second petition, which has been filed by the petitioner for grant of regular bail in case arising out of FIR No. 168 dated 08.12.2023, registered under Section 22 of the NDPS Act, 1985 (*Section 29 of NDPS Act added later on*) at Police Station City Nawanshahar, District S. B. S. Nagar. The first petition, bearing number **CRM-M-19116-2024**, was dismissed by this Court on 11.07.2024.
2. The operative part of the order dated 11.07.2024, whereby the first petition of the petitioner seeking grant of regular bail was dismissed, reads as under:

“6. The petitioner has been nominated in this case on the basis of the disclosure made by co-accused Sandeep Kumar @ Sonu, from whose custody, recovery of 450 intoxicant tablets was effected, which falls under the commercial quantity. The allegation against the petitioner is that he had supplied the recovered tablets to the

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co-accused on receiving a payment of Rs. 5900/-, which shows that he is actively involved in the business of supplying drugs/contraband. Investigation has since been completed. Challan has been presented and now the case is fixed for 26.07.2024 for leading prosecution evidence. The apprehension raised by learned State counsel that the petitioner, if extended bail, can tamper with the prosecution evidence cannot be stated to be unfounded. So far as the ratio of law as laid down by Hon'ble Supreme Court in *Tofan Singh*'s case (supra) is concerned, the same is not disputed but it stands clarified by Hon'ble Supreme Court in *State of Haryana vs. Samarth Kumar : 2022(3) RCR (Criminal) 991*, wherein it has been held that the advantage of decision of *Tofan Singh*'s case (supra) can be taken at the time of final hearing after conclusion of trial and even at the time of regular bail but that alone cannot form sufficient ground to grant regular bail as other parameters are also required to be looked into as in the present case, the recovery effected from the co-accused falls under commercial quantity and the petitioner is shown to have actively participated in commission of subject crime. Keeping in view the discussion as made above, the quantum of sentence which the conviction may entail and the attendant facts and circumstances of the case, I am of the considered opinion that the petitioner does not deserve to be granted benefit of regular bail, at this stage. Hence, the petition is dismissed."

3. The only argument which has been raised by learned counsel for the petitioner for grant of regular bail to the petitioner is that there is no mention in the disclosure statement of co-accused Sandeep Kumar @ Sonu that he had transferred the aforesaid amount of Rs.5900/- for supplying

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intoxicant tablets to the petitioner. However, a perusal of the disclosure statement of aforesaid co-accused shows that he had specifically disclosed that he had brought the intoxicant tablets from the petitioner for Rs. 380/- per strip for selling the same at higher price and had to give drug money back to the petitioner. The petitioner has placed on record a part of the *challan* report, a perusal of which, also shows that co-accused Sandeep Kumar had deposited an amount of Rs. 5900/- in the bank account of the petitioner. In this regard, learned counsel for the petitioner has argued that neither there is any statement of co-accused Sandeep Kumar or the petitioner nor there is any evidence that such amount was got credited by co-accused Sandeep Kumar into the bank account of the petitioner. However, this Court, while deciding a petition seeking grant of regular bail is not supposed to evaluate or assess the evidence collected during trial as the same has to be done by the trial Court at the time of disposal of trial.

4. Learned State counsel, while reiterating his argument, has vehemently opposed the prayer of the petitioner by submitting that the involvement of the petitioner in the subject crime has been established and since a commercial quantity of the contraband has been recovered in this case, the rigors of Section 37 of the NDPS Act would be attracted against the petitioner. It is also submitted that the previous petition as filed by the petitioner was dismissed by passing a detailed order by this Court by taking into consideration the contentions raised by both sides. It is further submitted that no new change in the circumstances has been pointed out. Allegations against the petitioner are quite serious in nature. More so, the trial has commenced and there is nothing on record to show that there would be any

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undue delay in conclusion of the same. Therefore, it is urged that the petition does not deserve to be allowed.

5. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record carefully.

6. The previous petition as filed by the petitioner for grant of regular bail had been dismissed vide order dated 11.07.2024. The instant one has been filed within a period of two months of the said order. It is well settled proposition of law that when successive bail applications come before the Court, the Court should be very cautious while considering the same. Successive bail applications can be entertained by the Court when some substantial change is established by the accused thereby making him entitled for grant of bail. Reference in this regard can be made to ***State of Maharashtra Vs. Captain Buddhikota Subha Rao, AIR 1989 Supreme Court, 2292***, wherein it was observed so and it was further held that the Court should not pass an order of release of an accused on bail in successive bail application merely establishing some cosmetic change between time gap of two applications. There must be some drastic change during the period between two applications. Reference can also be made to ***Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and another (2004) 7 SCC 528***, wherein it was observed by Hon'ble Supreme Court that where the offence alleged against an accused is grave, bail cannot be granted only on the ground of long incarceration.

7. After hearing the contentions as raised by learned counsel for the petitioner, I am of the considered opinion that in view of the position explained

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above, no substantial or drastic change from the date of dismissal of the previous petition as moved by the petitioner has been pointed out or made out from the pleas taken by the petitioner. The petitioner has relied upon some orders passed by this Court, wherein accused persons have been granted concession of regular bail by the coordinate Bench of this Court. However, these orders cannot be stated to be of binding nature as it is well settled law that orders of bail are not necessarily orders of any precedential value and they shall not be treated as precedent. Reliance in this context can be made upon the judgment of the Hon'ble Supreme Court in *Gajanand Agarwal v. State of Orissa and others, (2006) 12 SCC 131*. The trial is also going on at a good pace and there is nothing to show that there would be any undue delay in conclusion of the same. Keeping in view the nature and gravity of the offence, in my considered opinion, it is not a fit case to enlarge the petitioner on bail, especially in view of the fact that no drastic or material change in the circumstances has been made out. In view of the discussion as made above, but without meaning to make any comment on the merits of the case, I am of the considered opinion that the petition does not deserve to be allowed. Hence, the same is dismissed.

13.09.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No