

**232 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M No.54075 of 2023 (O&M)
Date of decision : 05.02.2024**

Krishan

..... Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Keshav Pratap Singh, Advocate and
Mr. Swapnil Bansal, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

PANKAJ JAIN, J. (ORAL)

1 This petition has been filed under Section 439 Cr.P.C. for grant of regular bail in case F.I.R. No.38 dated 03.02.2022 registered under Sections 20/29 of NDPS Act (Section 29 of NDPS Act added later on) at Police Station BPTP, Faridabad, District Faridabad.

2 Reply by way of affidavit of Rajeev Kumar, HPS, Assistant Commissioner of Police, Central Faridabad on behalf of respondent has been filed. The same is taken on record.

3 Custody certificate has been filed. The same is taken on record. As per the custody certificate, the petitioner is behind bars for more than 7 months & 26 days.

4 As per the case of the prosecution one Amit was apprehended and recovery of 2 kg. 30 gram of Ganja was effected from him. Said Amit is stated to have suffered disclosure statement while in

police custody on 03.02.2022 wherein he disclosed that he was purchasing the contraband from one Vikram resident of Village Meerpur Kaurali, Police Station Hassanpur, District Palwal. The disclosure statement of accused-Amit reads as under :-

“In the presence of the following witnesses, accused Amit aforesaid in the aforesaid case, in police custody, without any fear, greed or pressure, with his own free will disclosed that "I am doing work of selling Ganja for about one year and supply it in Faridabad. I am bringing the same after purchasing from Vikram resident of village Meerpur Kaurali, Police Station Hassanpur, District Palwal continuously. Vikram mostly finds in Kosi Kalan, Uttar Pradesh. There he has taken a rented room and he has also taken a rented room in Mathura. Uttar Pradesh in Moti Nagar. In those rooms he keeps only Ganja. About 3/4 days ago I had brought five kilograms Ganja at the rate of Rs.5000/- per Kg. from Vikram from Kosi, out of which I have sold maximum Ganja to its consumers. The remaining Ganja was kept concealed by me in my Swift Car under the driver's seat and today for some work, I after coming here at D.P.S. Chowk, was sitting in my car after parking the same, when the police suspecting Ganja in my car has apprehended me. I, after accompanying you to Mathura and Kosi, after showing addresses of Vikram, can get Vikram apprehended and can also get more Ganja recovered. Disclosure memo of accused was prepared, on which accused as well as witnesses put their respective signatures.”

5 The next day again one disclosure of Amit was recorded which further led to recovery of 38 kg 200 grams of ganja, which reads as under :-

“Disclosure statement of accused Amit.

In the presence of the following witnesses, accused Amit aforesaid in the aforesaid case, in police custody, without any fear, greed or pressure, with his own free will disclosed that "all

the information in the earlier the disclosure statement were correct, but I have concealed some facts from you. Now I am disclosing everything correctly to you. Around 4/5 days earlier I purchased 50 Kg Ganja from Vikram resident of village Meerpur Kaurali, Police Station Hassanpur, District Palwal from his rented accommodation at Kosi Kalan, District Mathura, Uttar Pradesh. Out of that some of the Ganja I have supplied and with about 2 Kgs of Ganja I was apprehended, the rest of the Ganja I have kept hidden at my house at Uncha Gaon, Ballabgarh. I can get the rest of the Ganja recovered from my house by going along with you. I am supplying Ganja to Sonu son of Gian chand and Hariom son of Dara Singh, residents of Kumhar Mohalla, Faridabad since long. Around 5/6 days earlier also I had given Ganja to Sonu and Hariom. Disclosure statement of accused was recorded on which accused as well as witnesses put their signatures.”

6 A bare perusal would reveal that source of ganja again stated to be Vikram. 2 days thereafter prosecution claims that Amit suffered another disclosure statement of his own will wherein he claimed that in earlier disclosure he intentionally gave name of Vikram to mislead the police but the truth is that the ganja was purchased from Krishan, the present petitioner. The disclosure reads as under :-

“Disclosure statement of accused Amit.

In the presence of the following witnesses, accused Amit aforesaid in the aforesaid case, in police custody, without any fear, greed or pressure, with his own free will disclosed that "earlier in my disclosure statement suffered before you I had intentionally given the name of Vikram resident of village Meerpur Kaurali, Police Station Hassanpur, District Palwal to mislead the police, because earlier Vikarm used to sell Ganja, but I have never purchase Ganja from Vikram. But the truth is that I had purchased Ganja from Krishan Pahalwan, resident of village Jatoli, P.S. Hassanpur, District Palwal and is supplying the same continuously. Krishan comes and deliver the Ganja to

me, I do not have the mobile number of Krishan, he used to take the order of Ganja by coming and delivers the Ganja suddenly on any time. Krishan does not reside in his village as there is a case under section 307 at police station, Hassanpur on him and he is absconding in the said case. He used to meet by calling from anyone's mobile. Upon calling by him I have met him several times near railway station at Kosi Kalan, district Mathura, Uttar Pradesh. It is possible that he had taken some rented accommodation there. In this business house and place of work is rarely shown to each other. I can go along with you to Kosi Kalan and I by roaming here and there can get him caught by identifying him. Disclosure statement of accused was recorded, on which accused as well as witnesses put their signatures.”

7 Learned counsel for the petitioner submits that apart from the aforesaid third disclosure made by Amit disclosing the name of the petitioner, there is no incriminating evidence against the petitioner in form of recovery etc. He further submits that so much so even the link evidence between Amit and petitioner is missing as there are no call details unearthed during the investigation. He asserts that it is a case of false implication infact one FIR No.145/2021 registered under Sections 147/149/224/225/332/353/186/307/379-B IPC & Section 25 of Arms Act wherein one police official is the complainant. The petitioner was nominated on the basis of disclosure in that case also which further led to implication of the petitioner in the present matters.

8 Learned State counsel refutes the aforesaid submissions to submit that the petitioner is a habitual offender and has also earned conviction in another NDPS case wherein the petitioner was found to be in possession of 800 grams of ganja and accordingly found guilty.

9 Petitioner is behind bars since 08.06.2023 and has undergone actual custody of 7 months & 26 days in the present case. The petitioner cannot deny the fact of there being earlier conviction under NDPS Act, however, keeping in view the nature of evidence, in the present case against the petitioner where in he has been nominated in the third disclosure made by main accused while in police custody and considering the fact that the investigation already stands concluded, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :-

- (i) *The petitioner shall not mis-use the liberty granted.*
- (ii) *The petitioner shall not tamper with any evidence oral or documentary during the trial.*
- (iii) *The petitioner shall not absent himself on any date before the trial.*
- (iv) *The petitioner shall not commit any offence while on bail.*
- (v) *The petitioner shall deposit his passport, if any with the trial Court.*
- (vi) *The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.*
- (vii) *The petitioner shall not in any manner try to delay the trial.*

10 Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.

11 Since the main case has been decided, therefore, **CRM-1619-2024** has become infructuous. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

05.02.2024
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No