



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M No.57136 of 2023 (O&M)
Date of decision: 09.05.2024

Rohit Kumar @ Rohit Bhardwaj @ Lotta
....Petitioner
Versus
State of Punjab
....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. K.S. Dadwal, Advocate
for the petitioner.
Mr. Rajesh Sehgal, Addl. A.G., Punjab.

NAMIT KUMAR J. (Oral)

1. Prayer in this 4th petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.104 dated 03.09.2022, registered under Sections 15 and 29 of the NDPS Act, at Police Station Chabbewal, District Hoshiarpur.
2. Learned counsel for the petitioner submits that as per the allegations in the FIR, the petitioner – Rohit Kumar @ Rohit Bhardwaj was in police custody in another case i.e. FIR No.140 dated 28.7.2022, Police Station Mahalpur and when he was interrogated in that case, he made a disclosure statement that the FIR had been registered against him on account of a scuffle which took place on Shahida Road, Mahalpur and thereafter, he was on a run and could not apply for bail due to insufficient funds. Thereafter, he discussed the matter with

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accused Nirpal Gujjar and Balwinder Singh @ Binder, in order to arrange money, and they both advised him that they will provide him Poppy Husk and he can sell the same to earn money and then, apply for bail. Thereafter, he started selling Poppy Husk in a Zen car and after selling some Poppy Husk, he concealed the remaining 03 bags of Poppy Husk, in the jungle and thereafter on his disclosure, 54 Kgs of Poppy Husk was got recovered and the impugned FIR has been registered.

3. Learned counsel for the petitioner submits that the alleged recovery has already been effected from the petitioner and he is no more required for further investigation. He further submits that the alleged recovery has been effected on the basis of alleged confessional statement of the petitioner, during his remand in some other case, which is an extrajudicial confession and the same is not admissible in law.

4. Learned counsel for the petitioner further contends that the alleged contraband recovered from the petitioner is marginally higher than the commercial quantity as if the weight of the bags is excluded then in all likelihood, the recovery effected from the petitioner, would be of non-commercial quantity. In support of his arguments, learned counsel for the petitioner has placed reliance upon the order dated 01.03.2017, passed in CRM-M No.35941 of 2016, titled as ***“Pritpal Singh @ Ambi vs State of Punjab”***.

5. Learned counsel for the petitioner further submits that the petitioner is innocent and he has been falsely implicated in the present case. He further submits that the petitioner is in custody for the last 01

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year, 08 months and 05 days. Lastly, he submits that the investigation in the present case is complete as challan stands presented on 27.02.2023; charges have been framed on 03.01.2024, and the case before the trial Court is now fixed for 05.06.2024, for recording the evidence of prosecution witnesses and the conclusion of the trial is likely to take some time and no fruitful purpose would be served by detaining the petitioner behind the bars.

6. Per contra, learned counsel for the State while placing on record the custody certificate dated 08.05.2024, has opposed the prayer for grant of regular bail to the petitioner on the ground that commercial quantity of Poppy Husk has been recovered from the petitioner. He further submits that petitioner is involved in some other cases also, therefore, he does not deserve the concession of regular bail.

7. Refuting the above contention of the learned State counsel, learned counsel for the petitioner contends that except the present one, the petitioner is not involved in any other case registered under the NDPS Act. Learned counsel for the petitioner has relied upon the judgment of Hon'ble Supreme Court in ***"Maulana Mohd. Amir Rashadi Vs. State of U.P. and another"***, 2012 (2) SCC 382, to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. The relevant portion of the said judgment is reproduced hereinbelow:-

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“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

8. I have heard learned counsel for the parties and perused the record.

9. Without commenting anything on merits of the case, considering the fact that if the weight of the recovered bags is excluded, the recovery effected from the petitioner, would be of non-commercial quantity or at the most marginally higher than the prescribed limit and the fact that the petitioner is in custody for the last 01 year, 08 months and 05 days; investigation is complete; challan stands presented; charges have been framed; out of total 08 prosecution witnesses, none has been examined so far and conclusion of the trial is likely to take some time, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate. 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.

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- (iv) The petitioner shall not commit any offence similar to the one alleged in the present case.
- (v) The petitioner shall deposit his passport, if any with the trial Court.
- (vi) The petitioner shall give his mobile number to the police authorities and shall not change his mobile number without prior permission of the trial Court.
- (vii) The petitioner shall not in any manner try to delay the trial.

10. In case of breach of any of the aforesaid conditions and those which may be imposed by the trial Court, the prosecution shall be at liberty to move an application for cancellation of bail of the petitioner.

(NAMIT KUMAR)
JUDGE

09.05.2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No