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

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CRM-M-54976-2024 (O&M)

Date of decision: 09.12.2024

Shamim**...Petitioner****Versus****State of Haryana****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Vinod Ghai, Senior Advocate with
Mr. Arnav Ghai, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. This petition has been filed by the petitioner under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking regular bail in case bearing FIR No. 74 dated 05.03.2024, registered under Sections 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'NDPS Act'*) at Police Station City Sohana, District Gurugram.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that on 05.03.2024, when a police party headed by ASI Sandeep was on patrolling duty, they received a secret information to the effect that a truck bearing registration number HR-38-AC-7912 was coming loaded with *Ganja* and it could be apprehended on laying a barricading. Believing the information to be true, barricading was done at the informed place and the aforesaid truck was stopped. On inquiry, the driver disclosed his name as 'Tasleem', whereas the conductor disclosed his name as 'Mukeem'. On search

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of the vehicle, 549 kgs. of *Ganja* was recovered from the same. Both the persons were formally arrested at the spot. During the course of investigation, the aforesaid co-accused named one Barkat Khan, who was arrested on 06.03.2024. The name of the petitioner surfaced in the disclosure statement of co-accused Barkat Khan. The petitioner was also arrested on the same day i.e. 06.03.2024. After completion of necessary investigation and usual formalities, *challan* was presented in the Court and presently, the petitioner along with the co-accused is facing trial for commission of aforesaid mentioned offence. He had moved an application before the learned trial Court for grant of regular bail but the same had been dismissed, vide order dated 18.10.2024.

3. Learned senior 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 no subsequent recovery was effected from the petitioner. Investigation has since been completed and *challan* has been presented. The petitioner is in judicial custody since 06.03.2024. The trial is likely to take time. No useful purpose would be served by keeping the petitioner in custody anymore. It is, therefore, urged that the petition deserves to be allowed.

4. Status report has already been filed by the respondent-State. It is submitted therein and learned State counsel has argued that though the

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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 used to give money to co-accused Barkat Khan on interest, from which, he used to purchase *Ganja* and sell the same. They used to share the profit received thereof. They have exchanged a number of calls during the relevant time. 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 Barkat Khan, who himself was named by co-accused Tasleem and Mukeem, who were apprehended by the police party on 05.03.2024 at the spot and recovery of 549 kgs. of *Ganja* was effected from their vehicle bearing registration number HR-38-AC-7912. The allegations against the petitioner are that he used to give money to co-accused Barkat Khan on interest and used to share the profit received from the sale of *Ganja*. The petitioner is in custody since 06.03.2024. No subsequent recovery of any contraband has been effected from him. No doubt, the petitioner and co-accused Barkat Khan had exchanged some calls but it will be a question of debate as to whether the petitioner was involved in the business of sale/purchase of contraband or not and the same can be decided by the learned trial Court only at the final conclusion of trial after appreciating the entire material and evidence placed on record before it. The petitioner is not involved in any other case of similar nature. Investigation has since been

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completed and *challan* has been presented. 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 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.

09.12.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No