



CRM-M-61648-2024

-1-

327

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

CRM-M-61648-2024

Date of Decision: December 16, 2024

Nitin @ Nitin Sharma

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Naresh Gopal Sharma, Advocate
for the petitioner.

Mr.Tanuj Sharma, AAG, Haryana.

.....

RAJESH BHARDWAJ, J.(ORAL)

1. Instant petition has been filed praying for grant of regular bail to the petitioner in case FIR No.249, dated 15.07.2024, under Section 21 (21-61-85) of Narcotics Drugs and Psychotropic Substances Act, 1985 (for brevity, 'the NDPS Act'), registered at Police Station Ambala City, District Ambala City, Haryana.

2. Succinctly facts of the case are that the Police party on 15.07.2024 received a secret information to the effect that Nitin, a resident of Hira Nagar, Ambala City, was involved in sale of heroin. It was informed that he was standing near a dilapidated building close to Bhola Nath temple in Hira Nagar and if raid is conducted, he would be arrested alongwith contraband. On receiving the secret information, the police constituted a raiding party and raided the place disclosed by the secret informer. They joined an independent witness, namely Gurdev Singh son of Kishan Ram.

**CRM-M-61648-2024****-2-**

The person apprehended disclosed his name as Nitin. In the presence of the independent witness, search was conducted and on search of his bag 114.22 grams of heroin was recovered. He failed to produce any licence regarding possession of the same and hence he was arrested on the spot. FIR was registered and samples taken were sent to the FSL. The petitioner approached the learned Additional Sessions Judge, Ambala, praying for grant of bail, however, after hearing both the sides, the same was declined vide order dated 12.11.2024. Aggrieved by the same, petitioner is before this Court praying for grant of regular bail.

3. It has been contended by counsel for the petitioner that petitioner has been falsely implicated in the present case. He submits that petitioner is involved in about 15 other cases and hence the police party intentionally implicated him in the present case by planting false recovery. He submits that as per case of the prosecution, the alleged recovery was effected in the presence of an independent witness, namely, Gurdev Singh, however, at the time of filing the challan, this independent witness, namely, Gurdev Singh has been intentionally given up on the ground that he may resile during the trial. He submits that false implication of the petitioner is writ large as case was planted upon the petitioner. He submits that even otherwise the recovered contraband from the petitioner falls in the category of non-commercial quantity, for which provisions of Section 37 of the Narcotics Drugs and Psychotropic Substances Act, 1985 are not attracted. He submits that investigation is also complete and thus, in the facts and circumstances of the case, the petitioner deserves to be granted regular bail.

4. Per contra, learned State counsel has opposed the submissions

**CRM-M-61648-2024****-3-**

made by learned counsel for the petitioner. He has submitted that the petitioner was duly named in the secret information and on receipt of the same, the place was raided, and he was arrested with the contraband. He submits that though the raiding team joined the independent witness, however, by giving him up the same would not affect the case of the prosecution. He submits that investigation is complete but charges are yet to be framed. He has also placed on record the custody certificate, which shows that petitioner is an habitual offender, who is involved in 16 other cases.

5. After hearing learned counsel for the parties and perusing the record, it is evident that present case was registered on the basis of secret information. The petitioner was arrested on the spot and the alleged recovery was made in the presence of an independent witness. However, copy of the challan has been produced before this Court in which the independent witness has been shown as given up by the prosecution on the ground that he may turn hostile during trial. The pendency of other cases would be in itself no ground to ignore the merits of the case in which the petitioner has approached this Court praying for grant of bail. Needless to say that provisions of Section 37 of the Narcotics Drugs and Psychotropic Substances Act, 1985 are not attracted in this case as the quantity effected from the petitioner falls under the non-commercial quantity.

6. Veracity of the allegations would be assessed by the trial Court only after appreciation of evidence to be led by both the parties. However, this Court would refrain itself from commenting anything on merits of the case, at this stage. The trial of the case will take sufficiently long time. In the overall facts and circumstances of the case, this Court finds that counsel



CRM-M-61648-2024

-4-

for the petitioner succeeds in making out a case for grant of bail to the petitioner.

7. In the totally of facts and circumstances and without making any observation on merits of the case, present petition is allowed. Petitioner be enlarged on bail on his furnishing bail/surety bonds subject to the satisfaction of trial Court/Duty Magistrate concerned. Nothing stated herein shall be treated as an expression of opinion on the merits of the case.

December 16, 2024

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(RAJESH BHARDWAJ)

JUDGE

1. Whether speaking/reasoned ?

Yes/No

2. Whether reportable ?

Yes/No