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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-63298-2024

Date of decision : 20.12.2024

Devender

.....Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Aman Pal, Advocate
Mr. Amardeep Singh Sandhu, Advocate and
Ms. Swati Katoch, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

RAJESH BHARDWAJ, J. (Oral)

1. Present petition has been filed by the petitioner praying for grant of regular bail in case FIR No.125 dated 21.05.2024, under Sections 20(b)(ii)C-61-85 of the NDPS Act, registered at Police Station Kosli, District Rewari.

2. Succinctly, facts of the case are that on 21.05.2024, police received a secret information to the effect that Sonu son of Gyani and Devendra son of Ishwar are indulging in selling the sulpha (charas) and they were coming in a white coloured car bearing No.HR 46 F 4771 from Kanina to Kosli and if the naqa is laid, they could be arrested along with the contraband. On finding the information reliable, the naqa was laid and thereafter, the police saw the car coming from Kanina side. It was stopped and the driver of the car disclosed his name as Sonu whereas, the person sitting by side disclosed his name to be Devendra (petitioner) son of Ishwar. Two persons were coming on the motorcycle who were requested to become the witnesses and they joined as independent witnesses. On



recovery of the car, offer was made and from underneath the mat of the vehicle, 974 grams of sulfa(charas) was recovered. Both Sonu and Devendra failed to produce any license regarding possession of the same. Thus, they were arrested for violation of the provisions of the NDPS Act. On registration of the FIR, investigation commenced. The samples taken were sent to the FSL. On completion of the investigation, challan was presented. Petitioner-Devender approached the Court of learned Additional Sessions Judge, Rewari praying for grant of bail. However, after hearing counsel for both the sides, learned Additional Sessions Judge, Rewari declined the same vide her order dated 25.11.2024. Hence, being aggrieved, petitioner is before this Court by way of filing the present petition.

3. Learned counsel for the petitioner has vehemently submitted that the petitioner has been falsely and frivolously implicated in this case. He submits that on the basis of secret information, case has been planted upon the petitioner. He submits that the petitioner has no criminal antecedents but he has been shown to have been travelling in the car which does not even belong to him. He submits that even otherwise, the alleged recovery effected from the car is weighing 974 grams which is a non-commercial quantity and thus, provisions of Section 37 of the NDPS Act are not attracted. He submits that co-accused Sonu has been granted the default bail under Section 167(2) Cr.P.C. by the trial Court vide order dated 12.12.2024. He submits that during investigation, third accused Bhimsen was arrested from whom 3 kg 110 grams of charas was recovered. He submits that the recovery made subsequently, cannot be foisted on the petitioner as the petitioner was in jail at that time and thus, he was not in conscious possession of the same. He submits that as per the case of the



prosecution, petitioner would face the prosecution only for the allegations of recovery 974 grams of charas which is non-commercial quantity. It is submitted that petitioner is behind bars since the date of his arrest and investigation already stands completed. Thus, in the facts and circumstances of the case, petitioner deserves to be granted bail.

4. Learned State counsel however, has opposed the submissions made by counsel for the petitioner. He has submitted that during investigation, on the disclosure made by the petitioner, co-accused Bhimsen was arrested from whom 3 kg 110 grams of charas was recovered. He submits that petitioner would be liable for the prosecution of the same as the same was a commercial quantity. He has produced the custody certificate. He thus, submits that there being no merit in the present petition, the same deserves to be dismissed.

5. This Court has heard counsel for the parties and perused the record with their able assistance. It is deciphered from the facts of the case that the petitioner has been arrested in this case on the basis of secret information and from the search of the car in which they were travelling, 974 grams of charas was recovered which is admittedly non-commercial quantity. However, subsequently, from co-accused Bhimsen recovery was effected. It is an admitted fact that the petitioner was in jail at that time. Whether the petitioner is to be prosecuted for a commercial quantity, is to be decided by the trial Court after appreciation of the evidence however, it is apparent that co-accused Sonu has already been granted default bail under Section 167(2) Cr.P.C. Custody certificate produced would show that petitioner is in incarceration from the last 06 months and 26 days. It further reflects that petitioner has not been prosecuted in any other case except the present case.

6. The veracity of the allegations would be assessed only after conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court. The trial of the case will take sufficiently long time. Thus, keeping in view the overall facts and circumstances of the case, this Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for grant of regular bail. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

20.12.2024
m.sharma

(RAJESH BHARDWAJ)
JUDGE

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