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

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**CRM-M-64047-2024 (O&M)
Date of decision: 30.01.2025**

Ashraf Shah

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Rakesh Nehra, Senior Advocate with
Mr. Sauhard Singh, Advocate
for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition, filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, is for grant of regular bail to the petitioner in FIR No. 359 dated 11.05.2024, registered under Sections 18, 27(a) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'NDPS Act'*) at Police Station Shahbad, District Kurukshetra.

2. Brief facts of the case relevant for the disposal of the present petition are that on 11.05.2024, a secret information was received to the effect that Himanshu Hemant @ Himmat and his aunt Leela Devi are indulged in selling opium and they can be apprehended as a consignment of opium was to be supplied to them. Believing the information reliable, a barrier was laid at the informed place and above named Himanshu Hemant @ Himmat was apprehended by the police party and recovery of 04 kgs. and 600 grams of opium was effected from him. On interrogation, he disclosed

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that the recovered contraband was supplied to him by the present petitioner. On the basis of the same, the petitioner was nominated in this case as an accused and was arrested on 17.05.2024. During interrogation, he admitted his involvement in the subject crime and that he had sold the recovered contraband to the above named co-accused @ Rs. 80,000/- per kg. After completion of necessary investigation and usual formalities, challan was presented in the Court and presently, the petitioner is facing trial for commission of aforesaid mentioned offences. He had moved an application before the trial Court for grant of regular bail but the same had been dismissed, vide order dated 10.07.2024.

3. Learned 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 evidence. There is nothing on record to connect the petitioner with the subject crime. He is in judicial custody since 17.05.2024. Investigation has since been completed and challan has been presented. 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. To fortify his 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.***

4. Status report has been filed by the respondent-State. It is submitted therein and learned Deputy Advocate General, Haryana has argued though the petitioner has been nominated in this case on the basis of

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the disclosure suffered by the co-accused but during the course of investigation, the involvement of the petitioner in the subject crime has been established. The petitioner had supplied the recovered contraband to the above named co-accused @ Rs. 80,000/- per kg. He is involved in one more case under the NDPS Act. Call details of the above named co-accused was procured and a perusal of the same shows that he was in constant touch over phone with the present petitioner. The trial is going on at a proper pace. It is also argued that if the petitioner is released on bail, he may abscond or indulged in similar offences. It is, thus, argued that the petition is liable to be dismissed.

5. I have heard 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 Himanshu Hemant @ Himmat, who was apprehended at the spot and from whose custody, recovery of 04 kgs. and 600 grams of opium was effected, which falls under the commercial quantity. The allegation against the petitioner is that he had supplied the recovered contraband to the co-accused @ Rs. 80,000/- per kg. He is shown to be involved in one more case under the NDPS Act. Trial is going on and there is nothing on record to show that there would be any undue delay in conclusion of the same. Since a commercial quantity of the contraband is involved in this case and the petitioner is involved in one case under the NDPS Act, the rigors of Section 37 of the NDPS Act would certainly be attracted against him. The apprehension raised by learned State counsel that the petitioner, if extended bail, may abscond or indulge in similar offences

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cannot be stated to be unfounded at this stage. So far as the ratio of law as laid down by Hon'ble Supreme Court in *Tofan Singh's* case (supra) is concerned, the same is not disputed but it stands clarified by Hon'ble Supreme Court in *State of Haryana vs. Samarth Kumar : 2022(3) RCR (Criminal) 991*, wherein it has been held that the advantage of decision of *Tofan Singh's* case (supra) can be taken at the time of final hearing after conclusion of trial and even at the time of regular bail but that alone cannot form sufficient ground to grant regular bail as other parameters are also required to be looked into. Keeping in view the discussion as made above, the quantity of the contraband recovered in this case, the criminal antecedents of the petitioner, the quantum of sentence which the conviction may entail and the attendant facts and circumstances of the case, I am of the considered opinion that the petitioner does not deserve to be granted benefit of regular bail, at this stage. Hence, the petition is dismissed.

7. It is made clear that the observations made hereinabove are only for the purpose of deciding the present petition and the same shall not be construed as an expression of opinion on the merits of the case.

30.01.2025

Wasim Ansari(MANISHA BATRA)
JUDGE*Whether speaking/reasoned**Yes/No**Whether reportable**Yes/No*