

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

CRM-M-11005 of 2017
Date of decision: 30.8.2017

Kewal Chand

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Yoginder Mohan Bhagirath, Advocate
for the petitioner.

Mr.K.S. Aulakh, DAG, Punjab.

H.S. MADAAN, J.

This petition for regular bail has been filed by petitioner – Kewal Chand – an accused in FIR No.98 dated 4.6.2015, under Sections 21 and 22 of NDPS Act, registered with Police Station Meharban, District Ludhiana.

Briefly stated, the prosecution story is that on 4.6.2015, SI Paramdeep Singh heading the police party travelling in a private car was present in the area of village Bade Road, Ludhiana, where SI received a secret information that Kewal Chand son of Tarsem Lal, resident of village Chaunta, Ludhiana has been supplying intoxicant powder to his customers on a motorcycle and he was going on motorcycle No.PB10-

EN-2652 for supply of narcotics to his customers in villages Coharwal and Kalewal. Accordingly, the vehicles were checked, during the course of which a motorcycle being driven by a heavy man came, who on seeing the police party after stopping the motorcycle turned back, however, he was apprehended. On being inquired, he disclosed his name as Kewal Chand son of Tarsem Lal, resident of village Chaunta, near Gurudwara Sahib. He was searched as per rules, which resulted in recovery of 70 gms. of intoxicant powder. Two samples of 5 gms. each were taken out therefrom and remaining was found to be 60 gms. Two samples and remaining bulk were converted into sealed parcels. Necessary formalities were completed and documents were prepared. Ruqa was sent to the police station, on the basis of which formal FIR was registered. After completion of investigation, challan was prepared and filed in the Court.

It may be mentioned here that after being arrested, the accused had moved an application for interim bail for the reason that report from Chemical Examiner had not been received. He was released on interim bail vide order dated 6.7.2015. Subsequently, report from FSL was received in terms of which Diphenoxylate Hydrochloride was found to be present in the contraband, which came within definition of commercial quantity, therefore interim bail granted to accused vide order dated 6.7.2015 was withdrawn vide order dated 30.1.2017. In that way, the petitioner has remained on interim bail for about 1 ½ years.

Now the petitioner is seeking regular bail for the reason that quantity is marginally higher than commercial quantity, the petitioner is a handicapped person, his wife is also handicapped and he has school going

children, therefore, he be granted regular bail.

Notice of the petition was given to respondent – State, which appeared through State counsel.

The request is opposed by learned State counsel contending that since the recovery involved amounts to commercial quantity, Section 37 of the Act comes in the way, which reads as under:

Offences to be cognizable and non-bailable.—(1)

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 3 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

After hearing the rival contentions, I find that the petitioner

was found in possession of contraband which is more than commercial quantity, therefore, Section 37 of the said Act comes into application and therefore concession of regular bail can certainly be not granted to him. The fact whether he is handicapped or his wife is also disabled hardly constitute any reason to grant him regular bail. As per report from medical board so constituted petitioner can drive motorcycle.

The drug trafficking is rising at alarming rate in this region, especially in the State of Punjab, which has ruined the lives of young men and women. Drug peddlers for a small monetary consideration take the youth to use drugs for a small time excitement/kick. The drug peddlers have successfully destroyed the social fabric of our society and led youth to the wrongful path. Such type of persons need to be dealt with firmly and sternly and no sympathy can be shown to them lest that should prove to be counter productive and result in increase drug trafficking.

Therefore, finding no merits in the petition, the same stands dismissed.

30.8.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No