

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

CRM-M-10099-2018
Date of decision: 14.08.2018

Anil Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Keshav Pratap Singh, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

This petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 468 dated 17.12.2016, registered under Sections 315, 420, 511 and 120-B of the IPC; Sections 3, 4, and 5 of the MTP Act, 1971 and Sections 21-A, 21-B, 21-C, 22-A, 22-B and 22-C of the NDPS Act at Police Station Civil Line Kaithal, District Kaithal.

Learned counsel for the petitioner submits that the petitioner is in judicial custody for the last about one year and five months and he was on interim bail from 14.09.2017 to 01.12.2017 awaiting the FSL report and has not misused the concession of interim bail.

Learned counsel for the petitioner further submits that as per the allegations in the FIR, at the first instance, a complaint was made by the civil surgeon to register a case against co-accused Dhiraj Kumar, Rajender Kumar and petitioner Anil Kumar and a team of medical officers raided the premises and they were informed by one Kashmir Singh that a person in

Kaithal is indulged in selling MTP kits. Later on, Kashmir Singh was made a decoy customer and he called co-accused Dhiraj who agreed to sell five MTP kits for a sum of ₹ 2000/-. Upon this, Kashmir Singh reached the spot along with officials and when the five MTP kits were handed over to Kashmir Singh, a raid was conducted and he was apprehended. On enquiry from Dhiraj, it came out that he had obtained the said MTP kits from co-accused Rajender Kumar and he was also called at the spot and was apprehended. On interrogation of co-accused Rajender Kumar, the name of the petitioner surfaced and thereafter, a team, consisting of police officials as well as medical officers, reached at the shop of the petitioner and made recovery of 10000 tablets of Diphenoxylate Hydrochloride & Atropine Sulphate, 600 tablets of Alphazolam, 120 injections of Pentzocine and 26 kits of Mesprits.

Learned counsel for the petitioner has further submitted that co-accused Rajender Kumar has already been granted concession of regular bail by this Court, vide order dated 09.01.2018 passed in CRM-M-48077-2017 and out of total 18 prosecution witnesses, only 04 witnesses have been examined so far and it will take a long time in conclusion of the trial.

Learned counsel for the petitioner has referred to the notice under Section 50 of the NDPS Act, which was served upon the petitioner, as well as his consent memo recorded by the police officials, wherein the offer given to the petitioner was whether he wants to be searched by the police or by a drug control officer. Learned counsel for the petitioner submitted that it will be a debatable issued, to be decided by the trial Court, whether such consent of the petitioner comply with the mandatory provisions of Section

50 of the NDPS Act.

Learned counsel for the petitioner has further submitted that the petitioner is not involved in any other case and he is not facing trial in any case under the NDPS Act.

Learned State counsel filed custody certificate and as per the same, the petitioner is in judicial custody for the last more than one year and five months and he is not involved in any other case. Learned State counsel has, however, opposed the prayer of the petitioner on the ground that the recovery effected from the petitioner falls in commercial quantity and the petitioner could not produce any licence for having the articles which were recovered.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the facts that the petitioner is in judicial custody for the last more than one year and five months; he is not involved in any other case; conclusion of the trial is likely to take some time as 14 more prosecution witnesses are yet to be examined and also considering the fact that it is yet to be decided whether the notice served upon the petitioner satisfies the compliance of the mandatory provisions of Section 50 of the NDPS Act; the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

14.08.2018

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*