

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

CRM-M-16403-2018
Date of decision: 07.08.2018

Jatinder Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Prashant Vashisth, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

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. 211 dated 26.09.2017, registered under Section 22/61/85 of the NDPS Act read with Section 25/54/59 of the Arms Act at Police Station Division No. 6, Ludhiana City, Ludhiana.

Learned counsel for the petitioner submits that the trial Court has framed the charges against the petitioner under Section 29 of the NDPS Act only and the substantive charge under Section 22 of the NDPS Act has been framed against co-accused Vinod Kumar. It is further submitted that the co-accused of the petitioner, namely Vijay Kumar, against whom the charge was framed under Section 29 of the NDPS Act, was granted regular bail by this Court, vide order dated 09.07.2018 passed in CRM-M-25397-2018. The operative part of the said order is reproduced below:

“Learned counsel for the petitioner submits that the

petitioner is a first time offender and the FIR was registered on a secret information that one Vinod Kumar along with petitioner Vijay Kumar and Jatinder Kumar are coming in a three wheeler scooter to sell intoxicant capsules and tablets and are also having fire arm with them. The police, after recording the FIR, laid barriers and stopped the three wheeler. As per the prosecution version, a *Datar* was recovered from the petitioner, whereas 300 capsules of Spasmo Proxyvon Plus and 70 strips of Paravon Spas Plus capsules, each strip containing 10 capsules i.e. total 700 capsules and 250 tablets of Nitravet and one pistol of 315 bore along with two live cartridges were recovered from the possession of co-accused Vinod Kumar and one knife was recovered from the possession of Jatinder Kumar.

Learned counsel for the petitioner further submits that during investigation, nothing has come on record that the petitioner was having the knowledge of conscious possession of the aforesaid recovery made from the co-accused and the trial Court, vide order dated 08.05.2018, has framed charge under Section 22 of the NDPS Act against co-accused Vinod Kumar from whom the contraband was recovered and the charge against the petitioner along with two co-accused Vinod Kumar and Jatinder Kumar is framed only under Section 29 of the NDPS Act and further charge against Vinod Kumar is framed under Section 25 of the Arms Act.

Learned counsel for the petitioner further submits that the petitioner is in judicial custody since 26.09.2017 and it will be a debatable issue whether the petitioner was part of the conspiracy while the prosecution will lead its evidence in support of the charge framed under Section 29 of the NDPS Act against the petitioner.

Custody certificate filed in the Court is taken on record. As per custody certificate, the petitioner is not involved in any other case and he has undergone 08 months and 16 days of judicial custody. Learned State counsel, on instructions from ASI Virender Singh, submits that post framing of the charge, till date, no evidence has been

recorded.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the fact that no contraband was recovered from the petitioner and he has been chargesheeted under Section 29 of the NDPS Act only; he is not involved in any other case; he is in judicial custody since 26.09.2017 and in view of the fact that the trial is likely to take some time, 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.”

Learned State counsel has filed custody certificate dated 30.04.2018 and as per the same, the petitioner has undergone approximately 10 months of judicial custody as on today and he is not involved in any other case under the NDPS Act.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the fact that no contraband was recovered from the petitioner and he has been chargesheeted under Section 29 of the NDPS Act only; he is not involved in any other case; he is in judicial custody since 28.09.2017 and in view of the fact that the trial is likely to take some time, 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/Illaqa Magistrate, concerned.

August 07, 2018

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*