

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

**CRM-M No.15645 of 2017
Date of Decision: 02.02.2018**

Deen Mohd.

.....Petitioner

Vs

Narcotics Control Bureau, Chandigarh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Raj Kumar Gupta, Advocate
for the petitioner.

Mr. D.D. Sharma, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

Petitioner craves indulgence of this Court for the grant of regular bail under Section 439 Cr.P.C in case bearing NCB Crime No.51 dated 22.11.2016, registered under Sections 8, 20 & 29 of the NDPS Act, 1985 at Narcotics Control Bureau, Chandigarh (hereinafter to be referred as 'the NCB').

The prosecution case started with the allegations that on 22.11.2016, a secret information was received by the team of NCB, Chandigarh that the accused/petitioner was carrying approximately 2 kgs. of *Charas* from Himachal Pradesh and has visited the house of co-accused Kasturi Lal, resident of

H.No.165, Pink Vihar, Chhavni Mohalla, P.S. Salem Tabri, Ludhiana. Thereafter team of the NCB, Chadigarh raided the house of Kasturi Lal from where the accused/petitioner Deen Mohd. was apprehended along with 1.600 kgs. of *Charas* and currency notes of Rs.45,000/- (in old denomination of 90 notes of Rs.500/-). The total recovery of 1.600 kgs. of *Charas* was effected from the accused/petitioner. Co-accused Kasturi Lal ran away from his house on arrival of the NCB team.

Crime No.51/2017 dated 22.11.2016, under Sections 8, 20 & 29 of the NDPS Act, 1985 was registered at the NCB Zonal Unit, Chandigarh. As per allegations in the complaint, it was recorded that on 22.11.2016, a specific information was received from a reliable source by Avdesh Kumar Investigating Officer that one person named Deen Mohd. of Chamba (H.P.) is delivering huge quantity of *Charas* to Kasturi Lal at H.No.165, Pink Vihar, Chhavni Mohalla, P.S. Salem Tabri, Ludhiana between 1930 hours to 2000 hrs. If surveillance is mounted near house of Kasturi Lal, the said person along with the consignment can be apprehended. The said information was reduced into writing and submitted to Kuldeep Sharma, Superintendent, NCB, Chandigarh Zonal Unit. Thereafter the Superintendent constituted a team under his supervision to carry out the preventive operation.

The NCB team proceeded for the house in question. The Team knocked the door to which a lady opened the same. Avdesh Kumar, Investigating Officer introduced himself and the team members. He also disclosed the purpose of coming to the house. During conversation, one person ran away from the house. The lady introduced herself as Kiran and told that the person who ran away from the spot was her husband Kasturi Lal. One more person tried to ran away, but was apprehended by the team. On being asked, he disclosed his name as Deen Mohammed. Kiran expressed her faith on NCB team and told that she has no objection in search of the house.

The search of the house was conducted by the NCB team. Deen Mohammed disclosed that Kasturi Lal has bought one and a half kgs. of *Charas* from him and has given Rs.45,000/-. He voluntarily handed over currency notes of Rs.45,000/- from his pocket which were given by Kasturi Lal. On search of the house, a bag having written Pal Departmental Store, Ludhiana over it, was found concealed in a woolen cap of light green colour from a cavity which was made in hollow part of the front wall. No other suspicious thing was recovered from the house. Small pieces were taken out from the bag and finger shaped *Charas* was found in the woolen cap which was found positive when checked with the help of drug detection kit.

The whole of the *Charas* was kept in bigger transparent polythene and on being weighed it was found to be 1.600 kgs.

Learned counsel for the petitioner submitted that the petitioner was apprehended on the spot, but formal arrest was intentionally not shown on 22.11.2016 itself. Recovery-cum-seizure memo was prepared on 22.11.2016 itself, but arrest was shown on 23.11.2016 at 1430 hours. During the intervening period, the statement of accused/petitioner under Section 67 of the NDPS Act, 1985 was recorded after giving him show cause notice to appear before the Intelligence Officer of the NCB, Chandigarh on 22.11.2016.

Learned counsel further submitted that issuance of show cause notice for appearance of the petitioner on 22.11.2016 before the Intelligence Officer was the farce inasmuch as he was in custody of the NCB team and his arrest was intentionally delayed so as to obtain his signatures for showing the confessional statement under Section 67 of the NDPS Act. Due to the aforesaid reason, the arrest of the petitioner was shown on 23.11.2016 that too at about 1430 hours.

Learned counsel further submitted that the alleged *Charas* was recovered in strips and only one strip of the recovered contraband was subjected to the chemical

examination by the Forensic Science Laboratory. The entire case property was not sent for forensic test. No mark of batch numbers were found on the strips so recovered. The wife of Kasturi Lal has not been arrayed as an accused. The complaint did not show any other accused including the said Kasturi Lal, who allegedly ran away from the spot on seeing the NCB team.

Learned counsel by relying upon **Gaunter Edwin Kircher vs. State of Goa, Secretariat Panji, Goa, 1993 AIR (SC) 1456** which was followed in **State of Punjab vs Dharam Singh, 2010(3) RCR (Criminal) 94 (DB)** contended that the entire bulk was to be sent for analysis, otherwise it would be debatable as to the exact quantity of the contraband allegedly recovered from the accused.

Learned counsel further by relying upon **Javed A. Bhat vs. Union of India, 2008(1) R.C.R. (Criminal) 57 (Bombay)** and **Laxminarayan vs. State of Madhya Pradesh (now State of Chhatisgarh), 2011(7) R.C.R. (Criminal) 586** contended that sending of only one representative sample for the chemical examination would not *ipso facto* give rise to a presumption that the entire bulk was containing *Charas*. In such eventuality, the contraband allegedly recovered would be confined to the contraband found on analysis.

The aforesaid controversy has been referred to a Larger Bench of this Court by the Co-ordinate Bench of this Court vide order dated 02.08.2017 passed in in **CRA-S No.5190-SB of 2015 (O&M)** titled '**Deepak Kumar vs. State of Punjab**'.

In view of above, without advertng to the merits of the case at this stage, I am of the view that petitioner, who is in custody since 22.11.2016 can be granted concession of regular bail.

In view of above, petition is allowed. Petitioner is ordered to be enlarged on bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the Chief Judicial Magistrate, Chandigarh.

Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

February 02, 2018

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(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No