

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34809-2018

Date of Decision: 03.12.2018

Karnail Singh

...Petitioner

vs.

State of Haryana

..Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Ms. Mandeep Kaur, Advocate for
Mr. D.S.Sandhu, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

ARVIND SINGH SANGWAN,J

Prayer in this petition is for grant of regular bail to the petitioner in case FIR No. 364 dated 16.12.2017 under Section 15 of the NDPS Act, registered at Police Station Pinjore, District Panchkula.

Counsel for the petitioner submits that the petitioner was not arrested at the spot. She further submits that co-accused of the petitioner, namely, Varinder Kumar, has been granted concession of regular bail, vide order dated 31.05.2018 passed in CRM-M-22746-2018. The operative part of the said order reads as under:-

“Learned counsel for the petitioner submits that as per the allegations in the FIR, on the intervening night of 15/16 December, 2017, ASI Anant Ram was on patrol duty and noticed that a car was seen coming on high speed on the main road which struck the wall of a resort as the driver of the car lost the balance. On seeing the police party, the driver of the car fled away from the spot. Thereafter, one of the police officials, who was with the police party, took certain photographs

of the said car. The car was searched and approximately 300 Kgs of poppy husk power were found which was packed in different packets. During investigation, the police arrested one Karnail Singh on the basis of the registration certificate of the Indigo Car bearing registration number PB-65-V-9944. On the disclosure statement of Karnail Singh that the petitioner was driving the car, the petitioner was arrested and thereafter the disclosure statement of the petitioner was recorded in which it is stated that he along with his companion Karnail Singh were coming in the aforesaid car carrying the poppy husk powder packed in 12 polythene packets.

Learned counsel for the petitioner further submits that as per the allegations in the FIR, the police had seen only one person in the car, who was driving the car and ran away from the spot, whereas, as per the disclosure statement of Karnail Singh, he along with the petitioner were there in the car and there is no explanation how the name of the second person is not mentioned in the FIR. Learned counsel for the petitioner has further submitted that it will be a debatable issue during the course of trial as to whether the disclosure statement of alleged co-accused is admissible against the petitioner, in pursuance of which, no recovery was effected from the petitioner.

Learned State counsel, on instructions from ASI Satwinder Singh, has opposed the grant of regular bail to the petitioner on the ground that recovery is of commercial quantity and the challan has already been presented. Learned State counsel has relied upon the photographs, which were allegedly taken by one of the police officials immediately after the accident.

After hearing learned counsel for the parties I find merit in the present petition.

In the 161 Cr.P.C. statements of one SI Gurmej Singh and one SPO Yashpal Singh, in whose presence the disclosure statements of the petitioner and Karnail Singh were recorded, it is mentioned that both the accused persons have deposed that the car was being driven at a high speed and after losing the control, it hit the wall of a marriage palace in which, both of them, i.e. petitioner and Karnail Singh, suffered many injuries and the car was damaged. Thereafter, they left the car along with the contraband and ran away by taking benefit of darkness. This statement is contrary to the version given in the FIR where it is stated that there was only one person who was driving the car and ran away from the spot. Even otherwise, a perusal of the photographs of the car shows that it was badly damaged and the driver of the car must have suffered some injuries and it was not possible for him to escape in the presence of the police party as they reached the spot immediately after accident. Even otherwise, the entire investigation against the petitioner is silent about any identification done by the prosecution as it is own case of the police that the petitioner ran away from the spot in their presence. Even the disclosure statement of Karnail Singh involving the petitioner as driver of the car and the disclosure of the petitioner himself, without there being any recovery in pursuance thereof, are yet to face the test of admission during the course of trial.

In view of the above, I hold that as per the provisions of Section 37 of the NDPS Act, there is a possibility that the petitioner was not involved in the present case. However the observations made in this order are only for the purpose of deciding this bail application and will have no bearing on the merits of the case.

Accordingly, 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, on instructions from ASI Satwinder Singh, submits that the petitioner is facing the trial in another FIR No. 90 of 2014, however, he is on bail.

Without commenting anything on the merits of the case, considering the fact that co-accused-Varinder Kumar, who is stated to be the driver of the car, has been granted concession of regular, the present petition is allowed and petitioner is directed to be released on bail, subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate concerned.

03.12.2018
smriti

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No