

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

**CRM-M-17323-2019
Date of decision: 16.05.2019**

Virender @ Birender

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Aditya Sanghi, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

This is the second petition that has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 12 dated 10.01.2019, registered under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 at Police Station Rania, District Sirsa, Haryana.

Learned counsel for the petitioner relies upon order dated 03.05.2019 passed in CRM-M-19005-2019, vide which, co-accused Aman Kumar has been granted regular bail by passing the following order:

“This is 2nd petition for grant of regular bail in FIR No.12 dated 10.01.2019 under Section 15 of NDPS Act, registered at Police Station Rania, District Sirsa. First petition seeking regular bail was termed as interim bail and the petitioner was released on interim bail awaiting the FSL report. Learned counsel for the petitioner submits that the petitioner has surrendered back before the trial Court on 22.04.2019, after receiving the FSL report. It is further submitted that as per allegations in the FIR, ASI Baljit Singh stopped a car and on suspicion, he apprehended three persons sitting in the car. Driver of the car disclosed his name as Rajesh Kumar, the person sitting on the co-driver seat disclosed his name as

Virender and the person sitting on the rear seat disclosed his name as Aman Kumar (petitioner). On checking of the car, some suspicious narcotic substance was found. A separate notice was given to the petitioner under Section 50 of NDPS Act and as per his consent, DSP Ravinder Kumar was called at the spot telephonically. Thereafter, on search of the car, plastic bags were recovered from the trunk (dikki) of the car, which contain 40 kg of doda chura post (poppy husk). Learned counsel for the petitioner has argued that in fact, owner and driver of the car is co-accused Rajesh Kumar and in the personal search, nothing was recovered from the petitioner and therefore, it will be a debatable issue whether the petitioner was in conscious possession of the contraband or not. Learned counsel further submits that the petitioner is in custody for the last 02 months and 25 days; he is not involved in any other case and has not misused the concession of interim bail, which was granted by this Court till receiving of the FSL report. Learned State counsel, on instructions from ASI Mahender Singh, has not disputed the factual position. Without commenting anything further on merits of the case, considering the aforesaid submissions made by learned counsel for the petitioner, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bond to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.”

Learned counsel for the petitioner further submits that the present petition is also the second petition and in the first petition, the petitioner was granted interim bail awaiting the FSL report, vide order dated 03.04.2019 passed in CRM-M-8616-2019, however, before the petitioner could be released, the FSL report was received and the petitioner continued in custody.

Learned counsel for the petitioner further submits that as per the allegations in the FIR, the petitioner was sitting on the co-driver seat of the car which was being driven by co-accused Rajesh Kumar, therefore, it will be a debatable issue whether the petitioner was in conscious possession of the contraband recovered from the car or not.

Learned counsel for the petitioner further argues that petitioner is in judicial custody for the last four months and five days and nothing was recovered from his personal search.

Learned State counsel, on instructions from ASI Mohinder Singh and on the basis of the custody certificate filed today in Court, has not disputed the factual position.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the aforesaid submissions of learned counsel for the parties and also in view of the fact that co-accused Aman Kumar has already been granted concession of regular bail as noticed above, 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.

16.05.2019

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No