

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

CRM-M No.9970 of 2018

Date of Decision: 14.01.2019

Raj Kumar

....Petitioner

Versus

State of Punjab

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. N.S. Dandiwal, Advocate
for the petitioner.

Ms. Rashmi Attri, A.A.G., Punjab.

DAYA CHAUDHARY, J. (ORAL)

This petition has been filed by petitioner accused Raj Kumar for grant of regular bail to him in case FIR No.86 dated 11.09.2017 registered under Sections 22/61/85 of the NDPS Act at Police Station Fatehgarh Panjtoor, District Moga.

Learned counsel for the petitioner submits that earlier the petitioner was released on interim bail as the FSL report was not received. Now, the petitioner has undergone custody of more than one year. In one case under the Excise Act, the petitioner was released on probation. In two other cases under the NDPS Act, small recovery was there and he is already on bail. Learned counsel also submits that as per FSL report received from the Chemical Examiner, the contents recovered from the petitioner was *Diphenoxylate Hydrochloride* and it does not fall under the ambit of NDPS Act. The bail application filed by the petitioner before the lower Court was dismissed only on the ground that it was a commercial quantity and falls within the ambit of commercial quantity by attracting the

provisions of Section 37 of the Narcotic Drugs and Psychotropic Substances Act. The petitioner remained behind bars from 11.09.2017 to 29.11.2017 and thereafter, since 15.02.2018, he is in custody. All witnesses are the official witnesses and there is no possibility that the petitioner may influence the witnesses or tamper with the evidence.

Learned State counsel has not disputed the custody period; the interim bail and also the fact that three more cases are there against him but she has opposed the bail of the petitioner on the ground that he is a habitual offender.

Heard the arguments of learned counsel for the parties and have also perused the contents of the FIR as well as other documents available on the file.

By considering the custody of more than one year; the fact that there is non-compliance of Sections 42 and 50 of the NDPS Act; in three cases including two cases under the NDPS Act, the petitioner is on bail and also the fact that all witnesses are the official witnesses and there is no possibility that the petitioner may influence the witnesses or tamper with the evidence, the present petition is allowed and petitioner, namely, Raj Kumar is directed to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court.

However, it is made clear that in case, the petitioner is found to be involved in any other case under the NDPS Act, the State is at liberty to move an application for cancellation of bail.

(DAYA CHAUDHARY)
JUDGE

14.01.2019

gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No