

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-31082 of 2019
Date of Decision: 30.09.2019

Avtar Singh @ Dablu

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.S. Narula, Advocate
for the petitioner.

Mr. Rakeshinder Singh Sidhu, A.A.G. Punjab.

SURINDER GUPTA, J.

The present petition has been filed under Section 439 Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 75 dated 09.03.2018 registered for the offence punishable under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station District Division no. 7, Ludhiana.

2. The petitioner was arrested by the police party headed by SI Surinder Singh of Police Station Division No. 7, Ludhiana on 09.03.2018 and from his possession 800 gms. of Heroin was recovered. After completion of investigation challan was presented in Court, where the petitioner is facing trial for offence punishable under Section 22 of the 'NDPS Act'.

3. While pressing for grant of bail to petitioner, learned counsel for the petitioner has argued that though Heroin recovered from the petitioner was 800 gms. but its active contents as per FSL report is 215 gms. which falls below the commercial quantity. The false implication of the

petitioner is writ large from the fact that *sarpanch* of village Panihari has given writing (Annexure P-3) that the petitioner was picked up from his house on 09.03.2018. Memos of giving option to petitioner to get his search conducted before a Magistrate or Gazetted Officer are all typed memos and the recovery memo (Annexure P-7) and memo of recovery of the car (Annexure P-8) are also bearing FIR number, which show that it is a planted case. PW-2 ASI Didar Singh has stated that the recovered contraband was of small pieces in the shape of balls while as per report of FSL, sample sent was of brown colour lumpy material. PW-1 Inspector Surinder Singh has stated that the case property was sealed in police station.

4. Learned counsel for the petitioner has further argued that the petitioner is in custody for the last 1 ½ year and prosecution has not been able to conclude its evidence. Conclusion of trial will take considerably long time, as such, petitioner may be allowed regular bail.

5. Recovery of Heroin from the petitioner is of commercial quantity. As per notification dated 18.11.2009, while assessing quantum of contraband, the entire quantity recovered is to be taken and not the percentage as mentioned in the report of FSL. The above notification has not been set aside so far. PW-1 Inspector Surinder Singh has nowhere stated that the case property was sealed in the police station. He has rather stated that the case property was produced before SHO on duty in the police station, who after checking the same put his own seal over it. PW-2 ASI Didar Singh has stated that the contraband was small pieces in the shape of balls. However, as per report of FSL, it was lumpy material. It will be for the trial Court to see and analyze as to whether small balls have turned into lumpy material due to moisture? However, the contents of samples were

found to be that of Heroin. Learned State counsel submits that it has been stated by police officials that recovery memos were prepared in laptop. Perusal of recovery memos (Annexures P-7 and P-8) show that columns of FIR number in the memos were kept blank and were later on filled in, which shows that FIR number was not mentioned in these memos at the time of preparation of the same. As per copy of statements produced on file, investigating officer and recovery witnesses have already been examined. It appears that only formal witnesses remain to be examined for which trial Court will expedite the trial and try to dispose of the case at the earliest, preferably within a period of four months.

6. As a sequel of my above discussion, I find no merit in this petition and the same is dismissed.

September 30, 2019
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No