

CRM-M-31578-2019

Date of decision: September 30, 2019

Kulwinder Singh @ Kinder

....Petitioner

Versus

State of Punjab

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWANPresent: Mr. D.S. Sandhu, Advocate
for the petitioner.

Mr. J.S. Ghumman, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer made in the petition is for grant of regular bail to the petitioner in case FIR No.190 dated 19.6.2018 registered under Section 22 of the NDPS Act at Police Station Sultanpur Lodhi, District Kapurthala.

On 31.7.2017, the following order was passed.

“As per the allegations in the FIR, the police party, headed by ASI Lakhbir Singh, on suspicion, apprehended the petitioner, who was coming on foot, and on seeing the police party, he tried to escape and took out a black envelope from the pocket of his shirt and threw the same on the earth. When the IO/ASI Lakhbir Singh asked him as to what he was carrying in his shirt, the petitioner, with his own hand, lifted the black polethene envelope and handed over the same to IO/ASI by saying that it contains intoxicant powder. Thereafter, the IO/ASI took the weight of the recovered powder, which was found to be 105 grams and by seizing the same, arrested the petitioner.

A perusal of the file shows that the petitioner was released on interim bail on 18.08.2018 by the trial Court awaiting the report of the Chemical Examiner and as per the Chemical Examiner, the recovered contraband was found to be containing Alprazolam. Thereafter, the interim bail of the petitioner was cancelled by the trial Court on 09.05.2019 and thereafter, the petitioner surrendered before the Court and his regular bail application was dismissed noticing the fact that the quantity of recovered contraband being above 100 grams falls under commercial quantity and since the recovery is of 105 grams of Alprazolam, the petitioner cannot be granted concession of regular bail.

A perusal of the file and the order of the trial Court further shows that the petitioner is not involved in any other case and the recovery is marginally higher than the commercial quantity.

As noticed above, in the FIR, neither any notice under Section 50 of the NDPS Act was given nor any consent or non-consent memo of the accused was recorded, which raises a suspicion about the manner in which the recovery was effected.

Since the Bar has abstained from work today and no one is appearing, list again on 12.09.2019.

In the meantime, the petitioner is directed to be released on interim bail, subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.”

Counsel for the petitioner submits that the petitioner remained in custody for more than 04 months. He further submits that though the FSL report has been received yet the challan is yet to be presented, therefore it

Learned State counsel, on instructions from ASI Rajwinder Singh and on the basis of the custody certificate submits that the petitioner is not involved in any other case.

In view of the same, the present petition is allowed and the order dated 31.7.2019 granting interim bail to the petitioner is made absolute, subject to the conditions envisaged under Section 438(2) Cr.P.C.

(ARVIND SINGH SANGWAN)
JUDGE

September 30, 2019
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No