

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-35609-2019

Date of decision: 05.09.2019

Anil Kumar

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Navneet Jindal, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.131 dated 21.09.2017 under Section 21-C of NDPS Act and Section 61 of Punjab Excise Act, 1914, registered at Police Station Odhan, District Sirsa.

Learned counsel for the petitioner relies upon the order dated 15.07.2019 passed in CRM-M-2542-2019, vide which co-accused of the petitioner, namely Hari Singh has been granted the concession of regular bail, by passing the following order: -

“...Counsel for the petitioner has submitted that after the report of the FSL has been received, the petitioner has surrendered back before the Jail Authorities and therefore, he has moved the second petition for grant of regular bail.

Counsel for the petitioner has further submitted that as per

the allegations in the FIR, the police party was present on Banwala Road area, village Khaishergarh in search of suspected persons and noticed that a Honda City car bearing registration No.DL2-FFU-0052 coming towards them. The Investigating Officer, ASI Kheta Ram signaled the same to stop and the driver of the car after stopping the same, tried to run away and the other person, whose name is Hari Singh i.e. the present petitioner, also tried to run away from the spot, however, both of them were apprehended by the police party. The Investigating Officer gave them a notice under Section 50 of the NDPS Act for giving an option to be searched before the Gazetted Officer or a Magistrate. Upon which, both of them reposed confidence with the same Investigating Officer. Thereafter, upon search of the car, 80 strips of Alprazolam tablets in bag and 75 strips of Alprazolam tablets (both containing 10 tablets each) were recovered. In the later part of the FIR, it is stated that when the petitioner Hari Singh was running towards cotton fields, he injured his left knee.

Counsel for the petitioner has relied upon FIR No.143 dated 24.10.2017, which was registered at the same Police Station Odhan District Sirsa, under Sections 323, 34, 341 IPC, on the complaint of the petitioner wherein it is stated that at about 11.30 p.m., he had started traveling in the car driven by some unknown person and the co-accused Anil son of Rashpal was sitting on the back seat and in the meantime, a liquor contractors Bolero car, hit the car from the back side and thereafter, some persons named in

the FIR came down and caused injuries to the petitioner and in that process, he suffered injury on his left knee and thereafter, the police came at the spot and recovered 18 cartons of liquor and intoxicant tablets.

On 21.05.2019, the following order was passed by this Court, directing the Investigating Officer to file an affidavit:-

“During the course of arguments, learned counsel for the petitioner has relied upon FIR No.143 dated 24.10.2017, which was registered on the statement of petitioner Hari Singh, wherein he has stated that on 20.09.2017 i.e. the day, when the FIR, in which he is praying for bail, at about 11.30 p.m., he was going in his Honda City car bearing registration No.DL-2FFU-0052 and some persons, who are the henchmen of liquor contractor, stopped his car and gave him beatings and thereafter, the police was informed and the police effected recovery of illicit liquor and narcotic tablets. It is submitted that all these facts have not been noticed in the present FIR, though the said incident was prior in time, as when the police arrested the petitioner and co-accused Anil, the said incident had already taken place, whereas the present FIR was registered much later.

Learned State counsel seeks some time to verify this fact and inform this Court by way of filing an affidavit of the Investigating Officer.

List again on 29.05.2019.”

Counsel for the petitioner has referred to para 6 of the affidavit wherein it is stated that initially, a DDR No.32 dated 23.10.2017 was recorded on the statement of the petitioner Hari Singh and later on, when the respectable persons of the village made their statement in support of the version of the petitioner,

FIR No.143 dated 24.10.2017 was registered in the same Police Station.

Counsel for the petitioner has further submitted that this affidavit has been filed by the second Investigating Officer i.e. ASI Raj Kumar and there is no such affidavit of the first Investigating Officer i.e. ASI Kheta Ram, who has arrested the petitioner.

Counsel for the petitioner has also submitted that the petitioner is the first offender and he is not involved in any other case.

Counsel for the State, on the basis of the Custody Certificate, has not disputed the custody of the petitioner, however, submits that the petitioner is involved in some other case under the Excise Act.

Without commenting anything on merits of the case, considering the fact that the petitioner is the first offender and he is not involved in any other case and conclusion of the trial is likely to take some time, this petition is allowed and the 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.

Learned counsel for the petitioner submits that case of the petitioner is also on parity with the aforesaid co-accused Hari Singh, as the allegations are that the petitioner was also present in the car along with co-accused Hari Singh.

Learned State counsel, on instructions from SI Dalip Singh, has not

disputed the factual position, however, on the basis of custody certificate dated 03.09.2019 filed in the Court today, has stated that the petitioner is in judicial custody for the last more than 06 months and is not involved in any other case under the NDPS Act.

Without commenting anything on merits of the case, considering the aforesaid submissions made by learned counsel for the parties and also in view of the order dated 15.07.2019 passed by this Court, granting regular bail to co-accused Hari Singh, 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.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

05.09.2019

vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No