

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

**CRM-M No.40672 of 2019 (O&M)
Date of Decision: 23.10.2019**

Nitin Gori

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Kanwaljit Singh, Senior Advocate assisted by
Mr. Abhishek Bajaj, Advocate for the petitioner.

Mr. Harpreet Singh Multani, AAG, Punjab
for the respondent/State.

MAHABIR SINGH SINDHU, J. (Oral)

Present petition has been filed under Section 439 Cr.P.C. for grant of bail pending trial to the petitioner in case bearing FIR No.163 dated 05.08.2019, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'the Act'*), registered at Police Station City Sangrur, District Sangur.

Contentends that as per the allegations of the prosecution itself, the polythene bag was being carried by co-accused Dilbar Khan as a pillion rider and he threw the same in the bushes, leading to the recovery of 5 strips of intoxicant injections (total 25 in number), but there is not even a whisper that any contraband was recovered from the petitioner. Also contends that petitioner is in custody since 05.08.2019 and after investigation, challan has already been presented on 18.10.2019 and

charges are yet to be considered in this case. Further contends that there is no other criminal case pending against the petitioner.

The above factual position is duly acknowledged by learned State Counsel, on instructions from S.I. Darshan Singh, but opposed the bail while submitting that contraband has been recovered from the co-accused and petitioner was driving the motorcycle.

Heard both sides and perused the paper-book.

As per the prosecution case itself, there is no allegation that petitioner was carrying the polythene bag or any contraband was recovered from him, rather the recovery is alleged to have been effected from the polythene bag, which was being carried by the co-accused, namely, Dilbar Khan although as a pillion rider. Thus, in the facts and circumstances of the present case, it would be a debatable question during trial as to whether petitioner was having any knowledge about the contraband and/or merely driving the motorcycle by him would be an offence under the Act. Concededly, in the present case, charges are yet to be framed and there is no other criminal case pending against the petitioner thus, his further incarceration would not serve any purpose. Consequently, without expressing any opinion on the merits of the case, the present petition is allowed. Petitioner be admitted to bail on his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court/Duty Magistrate concerned.

The above observations may not be construed as an expression of opinion on the merits of the case.

It is clarified that in case there is any recurrence on the part of the petitioner, State of Punjab would be at liberty to move an appropriate application for recalling of this order.

October 23, 2019
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes