

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-47435 of 2019 (O&M)

Date of Decision: 13.11.2019

Prince Kumar @ Vicky Gocha

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Kawaljyot Singh, Advocate
for the petitioner.

SURINDER GUPTA, J.(Oral)

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. 43 dated 25.04.2015 registered for the offence punishable under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Badhani Kalan, District Moga.

Heard.

Notice of motion.

On asking of the Court, Mr. Rakeshinder Singh Sidhu, A.A.G. Punjab, who is present in the Court accepts notice and submits that intimation by Registry informing of fixation of the petition has already been received and record of the case is available with him.

As per case of prosecution, 500 gms. of intoxicating powder (Tramadol) was recovered from possession of the petitioner on 25.04.2015. On the application of parents of accused, enquiry was conducted and vide report dated 28.07.2015, DSP (Investigation), Moga found allegations against the petitioner as false and he was found innocent. The report was

put up before Senior Superintendent of Police, Moga and was accepted. Discharge of petitioner from custody was sought by the police, which was allowed by the Court vide order dated 29.08.2015. Thereafter, Superintendent of Police (Investigation), Moga gave a report for presentation of challan for the reasons as follows:-

- (i) During investigation, motorcyclist, who had thrown the envelope containing narcotics was not traced;
- (ii) SHO, Police Station Badhani Kalan has submitted untrace report on 13.05.2016, which was consented by DSP Nihal Singh Wala on 15.11.2016 and by the investigating officer (Superintendent of Police, Investigation) on 26.05.2017;
- (iii) The petitioner was found innocent in the investigation and Senior Superintendent of Police, Moga had also consented to report declaring him innocent;
- (iv) Version of petitioner was not found believable for the reasons:-
 - (a) He had picked up the envelope thrown by the motorcyclist, checked it up and kept it with him. He felt perplexed on witnessing the police party;
 - (b) He had concealed the real facts before the investigating office during investigation.

On the basis of above report, the police presented challan in Court against the petitioner on 05.03.2019 and he was arrested on 20.07.2019.

There are two reports of police. In one it is declaring the

petitioner as innocent and in the other, declining the plea of his defence version. It will be a matter before the trial Court to see as to which version of the police is to be accepted.

Keeping in view above peculiar facts of the case, I am of the opinion that petitioner has arguable points to address in this case before the trial Court regarding version of the prosecution of recovery of 500 gms. of intoxicating powder from his possession.

Without expressing any opinion on merits of the case and keeping in view the fact that conclusion of trial will take considerably long time, the present petition is allowed. Petitioner-Prince Kumar @ Vicky Gocha is ordered to be released on regular bail on furnishing bail bond and surety bond to the satisfaction of concerned trial Court/Chief Judicial Magistrate/Duty Magistrate, subject to following terms:-

- (a) The petitioner shall comply with the conditions mentioned in Section 437(3) Cr.P.C.
- (b) In the event of his absence on any date of hearing, the benefit of bail allowed to the petitioner shall stand withdrawn. The trial Court shall be competent to cancel his bail bond and surety bond and proceed to procure his presence in accordance with law. In that eventuality the petitioner shall have to apply for bail afresh.
- (c) He shall not leave the country without the previous permission of the Court.

November 13, 2019
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No