

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-49167 of 2019

Date of Decision: 25.11.2019

Kulwinder Singh @ Kaka

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rajvir 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.108 dated 02.07.2019 registered for the offence punishable under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station City Rupnagar, District Rupnagar.

Heard.

Notice of motion.

On asking of the Court, Mr. Amitoj Singh Dhaliwal, DAG, 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, 52 gms. of intoxicating powder (*Diphenoxylate Hydrochloride*) was effected from the petitioner on 02.07.2019. On witnessing the police party, he had thrown the bag containing the contraband. On weighing the bag the weight of contraband came to be 52 gms., which includes the weight of bag as well.

Learned counsel for the petitioner submits that quantity of more than 50 gms. of '*Diphenoxylate Hydrochloride*' powder falls in commercial quantity of contraband. Weight of the bag, from which recovery was effected, was not separately taken.

Learned State counsel submits that weight of the contraband was taken alongwith bag.

Keeping in view above facts, I am of the opinion that it will be for the trial Court to see as to whether recovery of contraband effected from the petitioner falls in commercial or non-commercial category and this fact can be decided after recording the entire evidence.

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-Kulwinder Singh @ Kaka 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- (b) In the event of his absence on any date of hearing, the benefit of bail allowed to the petitioner shall stand withdrawn.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 25, 2019
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(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No