

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

Decided on: 18.01.2019

1. CRM-M No.165 of 2019

Sandeep @ Nippo

....Petitioner

Versus

State of Haryana

....Respondent

2. CRM-M No.159 of 2019

Mohan @ Kaliya

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Vikas Bishnoi, Advocate
for the petitioner (in both the petitions)

Mr. Surinder Singh, AAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in these petitions is for grant of regular bail to the petitioners namely Sandeep @ Nippo and Mohan @ Kaliya under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.309 dated 14.08.2018, for offence punishable under Sections 20 and 27-A of the Narcotic Drug and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') registered at Police Station Badhra, District Charkhi Dadri.

Counsel for the petitioners has submitted that no other case is pending against the petitioner – Sandeep Singh and he is the first offender whereas against the petitioner – Mohan @ Kaliya, one another

FIR under the provisions of the Indian Penal Code is pending, however, he is on bail in the said case.

Counsel for the petitioners has relied upon the order dated 26.11.2018 passed in CRM-M No.50271 of 2018, vide which the co-accused of the petitioner namely Parveen has been granted the concession of regular bail by this Court, noticing the fact that other accused namely Manjeet @ Bachhiya and Rinku have already been granted the concession of regular bail. The operative part of the order dated 26.11.2018 is reproduced as under:-

“...vide order dated 21.11.2018 passed in CRM-M-50050-2018. The operative part of the order reads as under:

“Learned counsel for the petitioner submits that as per the allegations in the FIR, on receiving a secret information that three persons, namely Satish, Sandeep @ Nippo and Manjeet @ Bachhiya, are coming on a motorcycle carrying contraband, the police party laid a Nakabandi and stopped the motorcycle on which the accused persons were coming.

It is further submitted that the secret information was never recorded in writing for registration of the FIR in this regard. Learned counsel for the petitioner further submits that in the FIR, it is further stated that after all the three persons were apprehended by the police and their names were disclosed, the Inspector/Investigating Officer obtained their joint consent and thereafter, he called the DSP at the spot.

*Learned counsel for the petitioner relies upon the judgment rendered in “**State of Rajasthan vs Parmanand and another**”, 2014(2) RCR (Criminal) 40, wherein, it has been held by the Hon'ble Supreme Court that considering the stringent provisions under the NDPS Act, the right available to an accused person under Section 50 of the NDPS Act, to be searched before a Gazetted Officer or a Magistrate, will be frustrated in case clear, unambiguous and individual offer is not given to the accused person. It is further held that joint*

communication of a right may not be clear or unequivocal as it may create confusion and may result in diluting the right.

Learned counsel for the petitioner further submits that in the FIR, it has come that after the recovery was effected from co-accused Sandeep @ Nippo, a parcel was prepared and sealed by putting five seals namely 'TS' and after using the seal, the same was destroyed and was not kept in safe custody, hence, again the proper procedure has not been followed.

Learned counsel for the petitioner further submits that petitioner is not involved in any other case under the NDPS Act.

Learned State counsel, on instructions from ASI Harinder Singh, submits that though the petitioner is not involved in any other case under the NDPS Act, however, he is involved in three other FIRs in other offences in which he is on bail. It is further submitted that investigation is complete and challan stands presented and eleven prosecution witnesses are yet to be examined.”

Learned counsel for the petitioner further submits that petitioner was not arrested at the spot and he is not involved in any other case.

Learned State counsel, on the basis of the custody certificate filed in Court today and on instructions from HC Sandeep Kumar, has not disputed the factual position. As per custody certificate, petitioner is not involved in any other case.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the aforesaid submissions of learned counsel for the petitioner; the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.”

Counsel for the petitioners has further argued that the aforesaid 03 co-accused have been granted the concession of regular bail noticing the fact that while conducting the search, a joint notice

was given to them, who were arrested at the spot by Inspector Hitender Singh (the Investigating Officer) and, therefore, in view of the judgment “*State of Rajasthan vs Parmanand and another*”, 2014(2) *RCR (Criminal) 40*, wherein it has been held by the Hon'ble Supreme Court that considering the stringent provisions under the NDPS Act, the right available to an accused person under Section 50 of the NDPS Act, to be searched before a Gazetted Officer or a Magistrate, will be frustrated in case clear, unambiguous and individual offer is not given to the accused person. It is further held that joint communication of a right may not be clear or unequivocal as it may create confusion and may result in diluting the right, the aforesaid 03 co-accused were granted the concession of regular bail. It was also observed that despite receiving a secret information and without recording the same in writing or sending the information for registration of the case, further investigation was carried out by the same police official.

Counsel for the State, has filed the Custody Certificate today in the Court and on the basis of the same and on instructions from SI Naresh Kumar, has not disputed the factual position but opposed the prayer for bail. It is further submitted that the case before the trial Court is now fixed for prosecution evidence for 06.02.2019.

Without commenting anything on merits of the case, considering the fact that the co-accused of the petitioners have already been granted the concession of bail by this Court as noticed above; the petitioner – Sandeep @ Nippo is not involved in any other case; the petitioner – Mohan @ Kaliya is on bail in another case, registered

against him under the provisions of IPC; the case before the trial Court is still at the stage of recording the evidence of prosecution witnesses and conclusion of the trial is likely to take some time, these petitions are allowed and the petitioners namely Sandeep @ Nippo and Mohan @ Kaliya are directed to be released on bail subject to their furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioners, in case they are found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

18.01.2019
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No