

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

**CRM-M No.51728 of 2019
Decided on: 11.12.2019**

Bhim Sain

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. N.K. Ganga, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this 3rd petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.198 dated 23.07.2018 under Sections 21 and 22(C) of the of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act'), registered at Police Station Dabwali Sadar, District Sirsa.

The first petition seeking regular bail to the petitioner was disposed of by granting interim bail to the petitioner, awaiting the report of the FSL whereas the second petition was dismissed as withdrawn.

Counsel for the petitioner has argued that now this 3rd petition has been filed in view of the changed circumstances that 02 of the co-accused have been granted the concession of regular bail and the petitioner is in custody for the last 01 year and 02 months.

Counsel for the petitioner has submitted that as per the

allegations in the FIR, on 23.07.2018 the petitioner was apprehended with 75 boxes of Tramadol Hydrochloride containing 18750 tablets and later on, on his disclosure, the other co-accused were also involved.

Counsel for the petitioner has further argued that after a notice under Section 50 of the NDPS Act was given to the petitioner, giving option to be searched before the Gazetted Officer or the Magistrate and when the petitioner reposed confidence in the same Investigating Officer/ASI Krishan Kumar, the subsequent investigation was conducted by the same I.O. without calling the second Investigating Officer and therefor, one of the moot point to be decided during the course of trial would be as to whether the proper procedure was followed or not while conducting the search of the petitioner. It is further submitted that the petitioner was granted the concession of interim bail on 11.03.2019 and after availing the same, he had surrendered on 23.05.2019.

Counsel for the petitioner has also argued that the case before the trial Court is now fixed for prosecution evidence, however till date, no prosecution witness has been examined. Counsel for the petitioner relies upon the order dated 06.09.2019 passed in CRM-M No.36039 of 2019 vide which the co-accused namely Rajender Parshad @ Raju was granted the concession of regular bail.

Counsel for the State has filed the Custody Certificate today in the Court and as per the Custody Certificate, the petitioner is in custody for the last 01 year, 02 months and 07 days and he is not involved in any other case.

Without commenting anything on merits of the case,

considering the fact that the petitioner is not involved in any other case under the NDPS Act; he is in judicial custody for the last 01 year, 02 months and 07 days; the co-accused of the petitioner namely Rajender Parshad @ Raju has already been granted the concession of regular bail; the custodial interrogation of the petitioner is no more required and it will take some time in conclusion of the trial, 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/Illaqa Magistrate/Duty Magistrate.

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

(ARVIND SINGH SANGWAN)
JUDGE

11.12.2019
yakub

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