

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

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**CRM-M-1452-2020
Date of decision: 17.12.2020**

SHANKAR

.....Petitioner

Versus

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Navneet Jindal, Advocate
for Mr. Aditya Sanghi, Advocate
for the petitioner.

Mr. Karan Garg, Asstt. A.G., Haryana
for the respondent.

ARUN KUMAR TYAGI, J (ORAL)

The petitioner has filed the present (third) petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.87 dated 04.04.2019 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "NDPS Act") in Police Station Civil Lines Sirsa, District Sirsa.

As per the prosecution version on 04.04.2019 on suspicion, the police party headed by ASI Deepak apprehended Shankar (the petitioner), who was carrying back-pack bag hanging on his waist. On search the bag was found to contain five boxes containing 200 capsules each labelled as NRX Tramadole Hydrochloride Diclofenac Sodium

Dicyclomine Hydrochloride Chlorpheniramine Maleate Capsules Parvorin Spas Ridley batch no. PAR-1827. On completion of investigation, the police charge sheeted the petitioner.

The petitioner being in custody since 04.04.2019 has filed the present third petition for grant of regular bail. His first petition for grant of regular bail was dismissed as withdrawn vide order dated 09.07.2019 and second petition for grant of regular bail was dismissed as withdrawn on 20.11.2019 while his petition for grant of default bail under Section 167 (2) of the Cr.P.C. was dismissed on 20.12.2019.

The petition has been opposed by the respondent-State. However, no reply has been filed on behalf of the respondent-State.

I have heard learned counsel for the petitioner and learned State counsel and gone through the record.

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated. Alleged recovery has been planted upon him. The mandatory provisions of the NDPS were not complied with. No independent witness has joined during the investigation. Complainant was the investigating officer. The trial is likely to take long time as due to restrictions imposed to prevent spread of infection of Covid-19, the criminal courts are not conducting trials. Therefore, the petitioner may be ordered to be released on regular bail. In support of his arguments, learned Counsel for the petitioner has relied on judgments passed by Co-ordinate Bench of this Court in CRM-M-27102-2020 titled as Saif Khan Vs. State of Haryana, CRM-M-18312-2020 titled as Sukhwinder Singh @ Binder Vs. State of

Punjab, CRM-M-47996-2019 titled as Kuldeep Singh Vs. State of Haryana, CRM-M-23640-2020 titled as Heera Singh Vs. State of Punjab, CRM-M-28591-2019 titled as Kulwant Singh Vs. State of Punjab granting bail to the petitioners accused of having kept in their possession commercial quantity of contraband on the ground of criminal courts not being functional due to pandemic of Covid-19.

On the other hand, learned State counsel has submitted that the petitioner is accused of having kept in his conscious possession commercial quantity of contraband. Rigors of Section 37(1)(b) of the NDPS Act are applicable to the present case. The petitioner does not deserve the grant of regular bail. Therefore, the petition may be dismissed.

Mere vulnerability to infection of Covid-19 is no ground for release on bail as nature of accusation, gravity of the offence and quantum of sentence have also to be taken into consideration. The offence allegedly committed by the petitioner being punishable under Section 22 (c) of the NDPS Act with rigorous imprisonment for a term not less than ten years which may extend to twenty years, and to fine not less than one lakh rupees which may extend to two lakh rupees, the case of the petitioner was not covered for release on bail under the orders of the High Powered Committee constituted in pursuance to the directions of Hon'ble Supreme Court SMWP (C) No. 1/2020. Therefore, the mere fact that the working of the Courts is affected due to restrictions imposed to prevent spread of Covid-19 is also by itself no ground for grant of bail to the petitioner. The judgments relied upon

by learned Counsel for the petitioner are also of no help to the petitioner as it is well settled that orders granting/declining bail cannot be treated as judicial precedents of binding nature. Reference in this regard may be made to judgment of Hon'ble Supreme Court in **Gajanand Aggarwal Vs. State of Orissa and others 2006 (4) RCR (Criminal) 311** wherein it was held that orders of bail are not necessarily orders of any precedent value. Even otherwise, subsequent to the passing of orders relied upon by learned Counsel for the petitioner, the restrictions imposed to prevent spread of infection of Covid-19 have now been eased out and now the trial Court can be directed to expedite the trial.

The questions as to non-compliance of the mandatory provisions of the NDPS Act and the effect of not joining of independent witness and complainant being investigating officer can be determined on the basis of evidence to be produced during trial and cannot be gone into at this stage as this Court is not required to judge/weigh intrinsic evidentiary value or sufficiency of the material to be translated into evidence against the petitioner.

Since the petitioner is alleged to have kept commercial quantity of the contraband in his conscious possession, rigors of Section 37(1)(b) of the NDPS Act are applicable to the case. There are no reasonable grounds for believing that the petitioner had not committed the offence punishable under Section 22 of the NDPS Act and that the petitioner will not commit any offence under the NDPS Act if released on bail. Delay in trial is by itself no ground for grant of bail

as the trial can also be expedited. In **State of Kerala Vs. Rajesh 2020 (1) RCR (Criminal) 818** Hon'ble Supreme Court has observed that the liberal approach in matter of bail under the NDPS Act is uncalled for.

In these facts and circumstances of the case but without commenting on merits, I am of the considered view that the petitioner does not deserve the concession of regular bail and the petition deserves to be dismissed.

Accordingly, the petition is dismissed.

However, in view of the observations made by Hon'ble Supreme Court in ***Doongar Singh Vs. State of Rajasthan 2018 (1) RCR Criminal 256, State of U.P. Vs. Shambhu Nath Singh and others, 2001 (2) R.C.R. (Criminal) 390, Hussain and another Vs. Union of India 2017(2) RCR Criminal 312*** and ***Thana Singh Vs. Central Bureau of Narcotics 2013(1) R.C.R(Criminal) 861***, the trial Court is directed to expedite the trial and record prosecution evidence preferably within a period of two months from the date of receipt of copy of this order by pre-poning the case, if so required and by conducting trial on day to day basis by allocating block of dates for the trial as directed by Hon'ble Supreme Court and by issuing coercive process for securing presence of the witnesses.

In case of non-appearance of official witnesses, the trial Court shall take appropriate action against the concerned police officials absenting without any lawful excuse by filing complaint under Section 174 of the Indian Penal Code, 1860 or taking proceedings under Section 350 of the Cr.P.C. against them.

The observations made by this Court are strictly for the purpose of disposal of the present petition and nothing in this order shall be treated as expression of any opinion on merits of the case so as to bind or influence the trial Court in adjudication of question of guilt or innocence of the petitioner.

A copy of this order be sent to the trial Court concerned for requisite compliance.

17.12.2020

kavneet singh

(ARUN KUMAR TYAGI)
JUDGE

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