

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-2978-2020 (O&M)
Date of decision: 07.08.2020

Deepak Kumar

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. R.S. Mamli, Advocate
for the petitioner.

Mr. Kuldeep Tiwari, Addl. AG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.1255 dated 27.12.2018 under Section 22 of NDPS Act, registered at Police Station Sirsa City, District Sirsa.

Learned counsel for the petitioner relies upon the order dated 08.01.2020 passed in CRM-M-51767-2019, granting regular bail to co-accused Prahlad Singh. The operative part of the order reads as under: -

“...The petitioner and his co-accused Deepak Kumar @ Deepu have been charge-sheeted by SHO, Police Station Sirsa City, District Sirsa for alleged commission of offence punishable under Section 22 of the NDPS Act on the allegations of recovery of 51 strips of Tramadol Hydrochloride PARVORIN-SPAS ridley containing 10 capsules each from a polythene bag carried between him and his co-accused Deepak Kumar @ Deepu who was pillion rider sitting in the motorcycle driven by the petitioner.

Learned Counsel for the petitioner has submitted that the petitioner has been falsely implicated. No recovery was effected from his possession. The petitioner cannot be said to be in conscious possession of the contraband allegedly recovered from the possession of co-accused Deepak Kumar @ Deepu who was the pillion rider having the bag in question and the petitioner cannot be said to be aware of the contents thereof. The mandatory provisions of the NDPS Act were not complied with. The petitioner is not involved in any other case under the NDPS Act. Therefore, the petitioner may be ordered to be released on regular bail.

On the other hand, learned State Counsel has submitted that the petitioner is accused of having committed serious offences by keeping commercial quantity of the contraband in his conscious possession along with his co-accused and the petitioner does not deserve the concession of regular bail. However, learned State Counsel has conceded that the petitioner is not involved in any other case under the NDPS Act.

Keeping in view the facts and circumstances of the case, involvement of question as to whether the petitioner can be said to be in conscious possession of the contraband recovered from his co-accused Deepak Kumar @ Deepu and the fact that he is not involved in any other case under the NDPS Act which by implication satisfies both the conditions of Section 37(1)(b) of the NDPS Act but without expressing any opinion on merits of the case, I am of the considered view that the petitioner deserves the concession of regular bail.

In view of the above discussion, the petition is allowed and the petitioner is ordered to be released on bail on furnishing of bail bonds to the satisfaction of the Trial Court/Duty Magistrate.”

Learned counsel for the petitioner submits that as per the prosecution version, polythene bag was kept between the petitioner-driver and the co-accused/pillion rider. It is further submitted that the petitioner is in

custody for the last about 01 year and 06 months; he is not involved in any other case and the trial is not proceeding in view of COVID-19 situation.

Learned State counsel, on instructions from the Investigating Officer, could not dispute the factual position, however, submits that recovery is of commercial quantity.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last more than 01 year and 06 months; he is not involved in any other case and his co-accused Prahlad Singh has already been granted the concession of regular bail, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

07.08.2020
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No