

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.207

CRM-M-3320-2020

Date of decision : 1.9.2020

Prince Kumar

..... Petitioner

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. G.S. Sandhu, Advocate, for the petitioner.

Mr. Pawan Sharda, Sr. DAG, Punjab.

SUDHIR MITTAL, J. (Oral)

The petitioner seeks regular bail in case FIR No.165 dated 28.6.2019, registered at Police Station Sri Muktsar Sahib, District Sri Muktsar Sahib, under Section 22 of NDPS Act, 1985.

Recovery of 1450 tablets of tramadol was allegedly made from the petitioner.

Learned counsel for the petitioner submits that the petitioner has been in custody for over 01 year. The trial is not likely to be concluded at an early date as only 02 PWs, out of a total of 13 PWs, have been examined. There are no other criminal cases pending against the petitioner under the NDPS Act, 1985 and thus, he may be released on regular bail.

Custody certificate dated 31.8.2020 has been submitted by learned State counsel in Court today and the same is taken on record. According to this certificate, the petitioner has undergone actual custody of 01 year, 02 months and 02 days.

Learned State counsel opposes the prayer for grant of regular bail on the ground that commercial quantity of narcotics was recovered from the petitioner and that Section 37 of the NDPS Act, 1985 bars grant of bail

He, however, concedes that the trial is not likely to be concluded at an early date as only 02 PWs, out of a total of 13 PWs, have been examined till date.

The question, thus is, whether, in a case, where commercial quantity of intoxicating substance has been recovered from an accused person, Courts are barred from granting him regular bail ?

Section 37 of the NDPS Act is reproduced below:-

Section 37. Offences to be cognizable and non-bailable.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]

Clause (b) of sub-section 1 of Section 37 reproduced hereinabove bars grant of bail to an accused in cases involving commercial quantity unless the Public Prosecutor has been heard and there are sufficient grounds

to believe that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

A perusal of the FIR shows that the petitioner allegedly became perplexed on seeing an approaching police party and threw a plastic bag carried in his right hand and tried to flee. He was, however, apprehended and search of the plastic bag resulted in recovery of the narcotic substance. There is no independent witness of this occurrence and thus, false implication cannot be ruled out. There is no other case under the NDPS Act, 1985 pending against the petitioner and thus, it can be safely said that he is not likely to commit any offence under the said Act while on bail. Moreover, the trial is not likely to be concluded at an early date and the petitioner has been in custody for over 01 year.

For the aforementioned reasons, the petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

However, nothing stated hereinabove, shall be construed to be an opinion on the merits of the case.

(SUDHIR MITTAL)
JUDGE

1.9.2020

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No