

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-5979-2020 (O&M)
Date of decision: 17.02.2020

Dharmender Kumar @ Dharmender

... Petitioner

Vs.

Union of India

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rahul Rampal, Advocate
for the petitioner.

Ms. Sharmila Sharma, Sr. Standing Counsel
for the respondent-UI.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in Crime Case No.41/2018 dated 09.10.2018 under Sections 8, 20, 25, 29, & 60 of NDPS Act, registered at Police Station NCB, Chandigarh.

Learned counsel for the petitioner relies upon the order dated 20.01.2020 passed in CRM-M-43988-2019, vide which co-accused Budhi Parkash has been granted the concession of regular bail. The operative part of the said order reads as under: -

“...Counsel for the petitioner has argued that as per the allegations in the complaint filed by NCB on receiving a secret information that the co-accused – Chaman Singh is bringing charas from Chamba to Ludhiana, a raid was conducted and on

09.10.2018 at about 07:30 PM, a Mahindra Pick-up vehicle bearing No.HP-73-A-1137, in which 03 persons were traveling i.e. Dharmender Kumar, who was driving the vehicle, Chaman Singh, who was sitting next to the driver and the petitioner was referred to as 3rd passenger of the vehicle were detained.

Counsel for the petitioner has further submitted that there on 10.10.2018, 2.5 Kgs of charas was recovered from the vehicle and Chaman Singh was arrested and the petitioner was let off as there was no evidence against him. It is also submitted that thereafter, on the basis of the disclosure statement of Chaman Singh on 11.10.2018, again recovery of 12.7 Kgs of charas was made from the cavity of the vehicle and as per the said disclosure statement of Chaman Singh, the petitioner and other accused Dharmender Kumar were also having the knowledge about the same.

Counsel for the petitioner has further argued that the petitioner was arrested on 12.10.2018 and on that day, his disclosure statement was also recorded that he had the knowledge about the contraband concealed in the vehicle. It is also submitted that when the second recovery was effected, the petitioner was not called and in his absence, the recovery was effected and even the disclosure statement of the co-accused was recorded prior to arrest of the petitioner and therefore, it will be a matter of trial to be decided during the course of trial, whether the said disclosure statement is admissible in evidence or not as the second recovery

was never effected in the presence of the petitioner.

Counsel for the petitioner has further argued that the petitioner is in custody since 12.10.2018; out of 18 PWs only 03 PWs have been examined so far.

In reply, counsel for the respondent – CBI, has not disputed the dates and the factual position argued by counsel for the petitioner. It is submitted that the next date of hearing fixed before the trial Court is 24.01.2020 for recording further evidence of the prosecution.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody since 12.10.2018; only 03 PWs have been examined so far out of 18 PWs; he is not involved in any other case and also in view of the fact that he was at the time of the first recovery was let off by the NCB as there was no evidence against him and later on, he was involved only on the basis of the disclosure statement of Chaman Singh, from whom the recovery was effected and also in view of the fact that the custodial interrogation of the petitioner is not 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/Illaq Magistrate/Duty Magistrate...”

Learned counsel for the petitioner submits that as per the complaint given by NCB, the petitioner, who was referred to as 2nd passenger in the vehicle and co-accused Budhi Parkash was referred as 3rd passenger in the

vehicle and after effecting the recovery, both of them were let off by the NCB and co-accused Chaman Singh was arrested. It is further submitted that after recording the second disclosure statement of co-accused Chaman Singh, again 12.7 kg of charas was recovered from cavity of the vehicle and it was stated by Chaman Singh that both; petitioner Dharmender Kumar @ Dharmender and co-accused Budhi Parkash were having knowledge of the same. Learned counsel further submits that the petitioner is not involved in any other case.

Learned counsel for respondent-UOI has filed the reply and has opposed the prayer for bail.

Without commenting anything on merits of the case, considering the fact that co-accused Budhi Parkash, whose case is on similar footings, has already been granted the concession of regular bail vide order dated 20.01.2020 and the petitioner is not involved in any other case, 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

17.02.2020
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No