

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

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**CRM-M-7004-2020
Date of decision: 12.03.2020**

Harish Kumar

.....Petitioner

Versus

State of U.T. Chandigarh

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Robin Singh Hooda, Advocate
for the petitioner.

Mr. Rajiv Vij, Addl. P.P., U.T., Chandigarh
for the respondent.

ARUN KUMAR TYAGI, J (ORAL)

The petitioner has filed the present (first) petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.09 dated 15.01.2020 under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, “the NDPS Act”) registered at Police Station Sector 31, Chandigarh.

As per prosecution version, on 15.01.2020, SI Lakhmir Singh along with HC Harpal Singh and Constables Kashmiri Lal and Sachin was present for patrolling duty in the area of Industrial Area, Phase-II, Chandigarh. Accused Harish Kumar came from the opposite side and on seeing the police party turned back on which he was over-powered on suspicion and 20 grams of heroin was recovered from polythene held by him in his right hand. The petitioner, who is in custody, has filed the present petition for grant of regular bail.

Learned Additional Public Prosecutor has appeared and opposed the bail application.

I have heard learned counsel for the petitioner and learned Additional Public Prosecutor and gone through the record.

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. Mandatory provisions of the NDPS Act have not been complied with. No independent witness was joined at the time of search. Provisions of Section 37(1)(b) of the NDPS Act are not applicable to the petitioner. The petitioner is in custody since 15.01.2020. The trial is likely to take long time and no useful purpose will be served by keeping the petitioner in further detention. Therefore, the petitioner may be granted regular bail.

On the other hand, learned State counsel has argued that the petitioner committed serious offence of keeping the prohibited quantity of intoxicant powder in violation of the provisions of the NDPS Act and does not deserve the grant of regular bail. Therefore, the petition may be dismissed.

However, learned State counsel has conceded that the petitioner is not involved in any other case under the NDPS Act.

Non-commercial quantity of heroin was allegedly recovered from possession of the petitioner. Rigors of Section 37(1)(b) of the NDPS Act are not applicable. In view of the facts and circumstances of the case, nature of accusation against the petitioner, the fact that the petitioner is in custody since 15.01.2020 and the trial is likely to take long time but without commenting on merits of the case, I am of the considered view that the petitioner deserves the concession of regular bail.

Therefore, the petition is allowed and the petitioner is ordered to be released on regular bail on furnishing of bail bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

However, in case of commission of any offence under the provisions of the NDPS Act by the petitioner in future, his bail in the present case shall also be liable to be cancelled on filing of application in this regard.

12.03.2020

Vinay

(ARUN KUMAR TYAGI)
JUDGE

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