

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

206

**CRM-M-7163-2019
Date of decision: 06.08.2020**

Sanjeev Arora @ Kaka

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Naveen Sharma, Advocate
for the petitioner.

Mr. M.S. Nagra, AAG, Punjab
for the respondent-State.

ARUN KUMAR TYAGI, J (ORAL)

The case has been taken up for hearing through video conferencing.

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.232 dated 23.06.2018 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') at Police Station City Shimlapuri, District Police Commissionerate Ludhiana.

Briefly stated the facts relevant for disposal of the present petition as alleged in the above-said FIR are that on 23.06.2018, SI Surinder Singh along with other police officials apprehended the petitioner on suspicion and on search recovered 303 grams of heroin from the bag held by him in his right hand.

The petitioner, who is in custody since 23.06.2018, has filed the present petition for grant of regular bail.

The petition has been opposed by learned State Counsel. However, no reply has been filed to the petition.

Custody Certificate has been filed by learned State Counsel through e-mail print out of which is taken on record.

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

Learned Counsel for the petitioner has argued that the petitioner has been falsely implicated in the case. No independent witness was joined at the time of alleged recovery. Mandatory provisions of NDPS Act were not complied with during investigation. The informant as well as the Investigating Officer was the same person. As per FSL report quantity of Diacetylmorphine in the contraband allegedly recovered from the petitioner was 29.16% and the alleged recovery of heroin did not fall in the category of commercial quantity. The petitioner is not involved in any other case other than the NDPS Act. The trial is likely to take long time due to restrictions imposed to prevent spread of infection of Covid-19. No useful purpose will be served by keeping the petitioner in custody. Therefore, the petitioner may be ordered to be released on regular bail.

On the other hand, learned State Counsel has argued that there was due compliance with the provisions of the NDPS Act. The observations in *Mohal Lal Vs. State of Punjab : 2018 (4) RCR (Criminal) 101* are not applicable to the facts of present case as the recovery was made before passing of the judgment in the above-said case. Neutral substance is not liable to be excluded in determination of the quantity of the contraband. The petitioner had kept commercial quantity of contraband in his possession without any permit or licence. In view of gravity of offence committed by the petitioner, the petitioner does not deserve the concession of regular bail. Therefore, the petition may be dismissed.

The questions as to the effect of not joining of any independent witness, non-compliance with the provisions of the NDPS Act and complainant being the Investigating Officer have to be determined on the basis of the evidence to be produced during trial. In determining the question as to whether the contraband recovered falls in the category of commercial quantity, neutral substance forming part thereof has to be included as held by Hon'ble Supreme Court in *Hira Singh Vs. Union of India : 2020 (2) RCR (Criminal) 523*.

Keeping in view the facts and circumstances of the case, nature of accusation and evidence against the petitioner, applicability of rigors of Section 37(1)(b) of the NDPS Act, absence of material

to enable this Court to prima facie hold that the petitioner has not committed the offence in question and that the petitioner will not commit any other offence under the NDPS Act in future if released in bail and also the fact that the trial can be expedited on easing out of the restrictions imposed to prevent spread of infection of Covid-19, I am of the considered view that the petitioner does not deserve the concession of regular bail.

In view of the above, 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 disposal of the case after easing out the restrictions imposed to prevent the spread of Covid-19 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.

06.08.2020

Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

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