

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

220

CRM-M-7797-2020

Date of decision: 27.02.2020

Gurmukh Singh @ Gumukh Singh @ Gagan

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Rajesh Bhatheja, Advocate
for the petitioner.

Mr. Arun Kaundal, DAG, Punjab
for respondent-State.

ARUN KUMAR TYAGI, J (ORAL)

The petitioner has filed the present petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No. 34 dated 30.04.2019 registered under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') at Police Station Special Task Force, Phase IV, District SAS Nagar, Mohali.

Briefly stated, the facts relevant for disposal of the petition are that on 30.04.2019, Inspector Harbans Singh alongwith other police officials was present near bus stop of village Harriar Kohara-Macchiwara road, District Ludhiana in connection with search of drug peddlers where he received secret information that accused-Harsimaranjit Singh, Rakesh Kumar and Gurmukh Singh indulge in sale of heroin in the area and are coming in car bearing registration no. DL-2C-AD-2323 to supply heroin to their customers at Ludhiana. If nakabandi is conducted on road leading from Machhiwara to Kohara, they can be apprehended. The

information being reliable, ruqa was sent to the police station on the basis of which FIR was registered. Nakabandi was conducted and car bearing registration No.DL-2C-AD-2323 was seen coming from Machhiwara side with three persons. SI Gurcharan Singh signalled the driver to stop the car but the driver accelerated the same. Inspector Harbans Singh alongwith other police officials chased them and encircled the car near Gandhi Chowk Machhiwara. On being encircled, the driver of the car hit the same against electric pole and all the occupants of the car tried to run away. They were apprehended with the help of the members of the police party. On search 310 grams of heroin was recovered from the right pocket of the pant worn by accused-Harsimranjit Singh while 290 grams of heroin was recovered from the pocked of the pant worn by accused Rakesh Kumar. However, nothing was recovered from the petitioner-Gurmukh Singh. The petitioner and his co-accused were arrested and later charge-sheeted by the police.

The petitioner who is in custody since 30.04.2019 has filed present petition for grant of regular bail.

Learned State Counsel has appeared and opposed the bail application.

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 and no recovery was made from his possession. The petitioner was not involved in commission of the subject offences and there is no evidence regarding his involvement in any conspiracy to commit the same. Rigors of Section 37(1)(b) of the NDPS are not applicable qua the petitioner. The

petitioner is not involved in any other case under the NDPS Act. The petitioner is in custody since 30.04.2019. Trial is likely to take long time and no useful purpose will be served by his further detention in custody. Therefore, the petitioner may be ordered to be released on bail.

On the other hand, learned State Counsel has argued that commercial quantity of heroin was recovered from both the co-accused of the petitioner. The petitioner was having knowledge as to his co-accused being in conscious possession of commercial quantity of heroin and conspired with them and thereby committed the offence punishable offence 29 of the NDPS Act. The petitioner does not deserve the concession 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.

In the present case, no recovery was made from the petitioner. Recovery of commercial quantity of heroin was made from his co-accused but his knowledge of the same and his involvement in the crime is disputed. In ***Criminal Appeal No. 1897 of 2019 arising out of SLP(Criminal) No. 3478 of 2019 titled as Sujit Tiwari versus State of Gujarat and another decided on 28.01.2020*** the petitioner travelling with his brother in ship carrying 1445 kgs of narcotic substances and alleged to have conspired in smuggling of the same to India was granted bail by Hon'ble Supreme Court on the ground that there was a possibility that he was unaware of the illegal activities of his brother and other crew members and there is reasonable probability that he may be acquitted. The facts of the present case are similar. The petitioner is not involved in any other case under the NDPS Act. Rigors of Section

the petitioner stands on a different footing from that of his co-accused. Trial is likely to take long time. Keeping in view the facts and circumstances of the case but without commenting on the 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/Duty Magistrate/Chief Judicial Magistrate concerned.

However, bail is granted to the petitioner subject to the condition that he will not commit any offence under the NDPS Act and in case of involvement of the petitioner in commission of any offence under the NDPS Act in future, his bail in the present case shall also be liable to be cancelled on application to be filed in this regard.

27.02.2020

Rajeev (rvs)

(ARUN KUMAR TYAGI)
JUDGE

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