

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**CRM-M-8995-2020
Date of decision: 06.08.2020**

Jagsir Singh @ Shira

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Gurpal Singh Sandhu, Advocate
for the petitioner.

Ms. Bhavna Gupta, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

This petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 192 dated 01.10.2019, registered under Section 22 of the Narcotic Drugs & Psychotropic Substances Act, 1985 at Police Station City Malout, District Sri Muktsar Sahib.

Learned counsel for the petitioner relies upon order dated 18.03.2020 passed in **CRM-M-10541-2020**, wherein co-accused Jaswinder Singh has been granted concession of regular bail by this Court. The operative part of the order reads as under:

“2. It is the case of prosecution that three persons were travelling on a motorcycle, which was being driven by Jagsir Singh @ Seera and on which Rajesh Kumar @ Kali was sitting next to him and the petitioner Jaswinder Singh @ Jassi was sitting on the last seat. It is alleged that when the said motorcycle was signaled to stop, the

driver of motorcycle after applying brakes tried to turn back the motorcycle and during the said process a transparent polythene which was lying in between the driver and the person sitting next to him fell on the road, in which there were 1450 intoxicating tablets, which upon chemical analysis were found to contain 'Tramadol'.

3. The learned counsel for the petitioner has submitted that the petitioner being sitting on the last seat of motorcycle was not having knowledge about the contents being carried by other two occupants as the bag in question was lying in between the driver and the person sitting next to him i.e. between Jagsir Singh @ Seera and Rajesh Kumar @ Kali.

4. Opposing the petition, the learned State counsel has submitted that since all the three persons were travelling together on a motorcycle, it is clearly evident that all of them were aware of the contents of polythene bag, which was being carried on the motorcycle and in these circumstances the petitioner although sitting on the rear seat of the motorcycle can well be attributed conscious possession of the contraband. The learned State counsel has, however, informed that the petitioner has been behind bars since the last about 5½ months and that he is not involved in any other case.

5. Having heard the learned counsel for the petitioner, it will be debatable as to whether the petitioner can be attributed conscious possession of the contraband. In any case, since the petitioner is not involved in any other case and has been behind bars since the last about 5½ months and challan is stated to be ready, further detention of the petitioner will not serve any useful purpose as the conclusion of trial is likely to take some time.

6. The petition, as such, is accepted and it is

ordered that the petitioner be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.”

Learned counsel for the petitioner further submits that even another accused namely Rajesh Kumar has been granted concession of regular bail by this Court, vide order dated 25.06.2020 passed in ***CRM-M-14483-2020***.

Learned counsel for the petitioner further submits that even the complainant and the investigating officer are the same person and it is a matter trial as to who was in conscious possession of the contraband recovered because as per the prosecution version, when the police party stopped the motorcycle, on which three persons were riding including petitioner as driver of the same, a polythene bag fell down on the earth, from which, the recovery was effected.

Learned State counsel has filed the custody certificate, as per which, the petitioner is in judicial custody for the last about 10 months and he is not involved in any other case under the NDPS Act. Learned State counsel has opposed the bail on the ground that the recovery is of commercial quantity.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the fact that co-accused of the petitioner have already been granted concession of regular bail as noticed above; he is not involved in any other case and also in view of the fact that due to COVID-19 situation, the trial is not likely to proceed, the instant petition is allowed. The petitioner is

ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaqa Magistrate, concerned.

06.08.2020

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No