

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

222

CRM-M-9577-2020 (O&M)

Date of decision: 16.12.2020

BALWINDER SINGH @ BAU

.....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Vipul Jindal, Advocate
for the applicant-petitioner.

Mr. Sandeep Kumar, DAG, Punjab
for the respondent-State.

ARUN KUMAR TYAGI, J (ORAL)

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

CRM-30196-2020

For the reasons mentioned in the application, the same is allowed and the applicant-petitioner is exempted from filing certified copies of additional documents and the true typed/translated copies of the same are taken on record as Annexures P-3 to P-10.

CRM-M-9577-2020

The petitioner has filed the present (first) petition under Section 439 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") for grant of regular bail in case FIR No.38 dated 28.06.2019 registered under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act") at Police Station Sarai Amanat Khan, District Taran Taran.

As per the prosecution version on 28.06.2019 police party headed by ASI Harjit Singh apprehended co-accused Jaspal Singh @ Nikka and recovered 265 grams of heroin from his possession. During investigation co-accused Jaspal Singh @ Nikka made disclosure statement that he had purchased the heroin from the present petitioner on which the petitioner was arrested in the case.

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

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 relevant record.

Learned Counsel for the petitioner has submitted that the petitioner was not apprehended on the spot and no recovery was made from him. The petitioner has been falsely implicated in the case on the basis of disclosure statement of his co-accused Jaspal Singh @ Nikka from whose possession recovery of 265 grams of heroin was allegedly made. There is no evidence against the petitioner except the disclosure statement of co-accused which is of no evidenciary value against him. The trial is likely to take long time due to restrictions imposed to prevent the spread of infection of Covid-19 and no useful purpose will be served by further detention of the petitioner in custody. Therefore, the petitioner may be granted regular bail. In support of his arguments learned counsel for the petitioner has placed reliance on the observations in **Haricharan Kurmi Vs. State of Bihar in AIR 1964**

SC 1184; Surinder Kumar Khanna Vs. Intelligence Officer DRI

(2018) 8 SCC 271; Criminal Appeal No.1897 of 2019 titled as Sujit Tiwari Vs. State of Gujarat and another decided on 28.01.2020; Criminal Appeal No.1926 of 2014 titled as Ram Prasad Khandwal Vs. The State of Bihar decided on 28.01.2019; Criminal Appeal No.245/2020 (SLP (Criminal) No.8823/2019) titled as Chitta Biswas @ Subhas Vs. The State of West Bengal decided on 07.02.2020; Criminal Appeal No. 668 of 2020 (SLP (Criminal) 3813 of 2020) titled as Amit Singh Moni Vs. State of Himachal Pradesh decided on 12.10.2020 and CRM-M No.48222 of 2019 titled as Jagsir Singh Alias Sira versus State of Haryana decided on 19.11.2020.

On the other hand, learned State Counsel has submitted that the petitioner is accused of having committed serious offence. In view of the nature of accusation and gravity of the offence, the petitioner does not deserve grant of regular bail. Therefore, the petition may be dismissed.

Keeping in view the facts and circumstances of the case particularly the facts that the petitioner has been implicated on the basis of disclosure statement of co-accused, no recovery has been made from him, there is no other material regarding his complicity and he is not involved any other case under the NDPS Act which by implication satisfies both the conditions of Section 37 (1) (b) of the NDPS Act coupled with the fact that the trial is likely to take long time due to restrictions imposed to prevent spread of infection of COVID-19 but without expressing any opinion on merits of the case, I am of the considered view that the petitioner deserves the concession of regular bail.

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

However, the petitioner is granted regular bail subject to the condition that he shall not commit any offence under the NDPS Act after his release on bail and in case of commission of any such offence by him after his release on bail, his bail in the present case shall also be liable to be cancelled on application to be filed by the prosecution in this regard.

16.12.2020
Vishal

(ARUN KUMAR TYAGI)
JUDGE

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