

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

201-2

CRM-M-13310-2020 (O&M)

Date of Decision : 05.08.2020

Harwinder Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. P.P.S. Tung, Advocate
for the petitioner.

Mr. H.S. Multani, AAG, Punjab
for the respondent-State.

ARUN KUMAR TYAGI, J. (Oral)

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

CRM-18127-2020

For the reasons mentioned in the application, the same is allowed and recovery memo dated 23.11.2019 is taken on record as Annexure P-2.

CRM-M-13310-2020

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.482 dated 23.11.2019 registered under Sections 21, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') at Police Station City Barnala, District Barnala.

Briefly stated the facts relevant for disposal of the present petition as alleged in the above-said FIR are that on 23.11.2019, when ASI Satwinder Pal Singh along with Constable Randeep Singh and PHG Balwant Singh was present on Gatakhana Chowk, Barnala secret information was received by him that the petitioner and his co-accused Makhan Singh were bringing intoxicant tablets in Swift Dezire Car bearing registration No.DL-9CW-8203 and if nakabandi was conducted they could be apprehended with the contraband. The above-said FIR was registered. Nakabandi was conducted. On search 250 strips of Clovidol-100 SR each strip containing 10 tablets totalling 2500 tablets were

recovered from carry bag kept by co-accused Makhan Singh.

The petitioner, who is in custody since 23.11.2019, has filed the present petition for grant of regular bail.

Petition has been opposed by learned State Counsel. However, no reply has been filed by respondent-State.

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. As per the recovery memo, the intoxicant tablets were recovered from the carry bag kept by co-accused Makhan Singh in his lap. The petitioner cannot be said to have any knowledge about contents of the bag and to be in conscious possession of the intoxicant tablets. The petitioner is not involved in any other case under the NDPS Act. Provisions of Section 37(1)(b) of the NDPS are not applicable qua the petitioner. Trial is likely to take long time and 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 the petitioner is owner of the car and was driving the same at the time of alleged recovery of commercial quantity of intoxicant tablets from carry bag kept by his co-accused Makhan Singh. In view of gravity of offences, the petitioner does not deserve the concession of regular bail. Therefore, the petition may be dismissed.

However, on instructions from ASI Jarnail Singh, learned State Counsel has conceded the fact that the petitioner is not involved in any other case under the NDPS Act.

As per averments made in the recovery memo, recovery of contraband was made from the carry bag of co-accused Makhan Singh and no recovery was made from the petitioner and the car. The case involves disputed question as to whether the petitioner can be said to be in conscious possession of the contraband kept in the carry bag of the co-accused and applicability of Section 37(1)(b) of the NDPS Act qua the petitioner is also challenged. Admittedly, the petitioner is not involved in any other case under the NDPS Act.

Keeping in view the facts and circumstances of the case, nature of accusation against the petitioner and the fact that no recovery was made from the petitioner and the car as also the fact that the petitioner is not involved in any other case under the NDPS Act 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 requisite bail 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 offence under the NDPS Act by him in future his bail in the present case shall also be liable to be cancelled on application to be filed in this regard.

05.08.2020

Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

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